

# Employing or hiring people

## Main topics

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- Do I have to pay an employee's superannuation?
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## Step-by-Step Guides

New employers can get step-by-step help with the key aspects of employing people by using online Step-By-Step guides to Employing People and Workplace Safety.

All guides provide you with a handy checklist to help you complete tasks.

Go to: [business.vic.gov.au/stepbystep](http://business.vic.gov.au/stepbystep)



### The basics:

- employing or hiring people is a complex task with many obligations, but is often the only way to achieve business growth
- deciding what type of people you need is easier when you're clear about your business goals
- the federal government's *Fair Work Act* covers businesses in Victoria
- Individual Transitional Employment Agreements (ITEAs) can be made between some employers and employees until the end of 2009

## Should I employ or hire people?

**Table 1:** There are five main ways you can employ or hire people

Paid by wages	• permanent full-time or part-time (can also be fixed term)
	• casual
	• apprentices or trainees
Paid by invoice	• employment agency staff, also called labour hire
	• contractors and subcontractors

Each way of hiring or employing provides people with different skills, levels of interest in your business, and availability to work. The cost, plus your legal, administrative and supervisory obligations for each type of employee or hire staff varies.

### Paid by wages: employees: permanent, casual, apprentices and trainees

(**Tip:** Leave entitlements are detailed on page 3 and Table 2.)

Employees usually:

- get payment as wages or salary and tax taken out by their employer, and have their superannuation paid for them
- are based at your business, work at your home, or are mobile, for example, a sales representative
- can be full-time, part-time, apprentices, trainees or casual, and can be directed when, what and how to do a task

■ **Permanent (full-time or part-time) employees** A **full-time** employee usually works a standard day and week, for example, Monday to Friday 9 am to 5 pm. A **part-time employee** usually works regular set hours, but less than a full-time week, for example, Wednesday to Friday, 11 am to 1 pm.

■ **Casual employees** Can be used for short irregular periods of work but can also work in long-term arrangements.

Casual employees:

- can be asked to work irregular shifts and at short notice, with no guarantee of regular hours
- do not get annual leave, paid sick leave or payment for public holidays not worked
- can be terminated or resign with an hour's notice, unless they're covered by an agreement that specifies otherwise
- are good for irregular and short term work demands
- offer a flexible arrangement for the employer and employee

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### Financial and other help for employing apprentices and trainees

Some of the incentives offered to employers and apprentices by the federal and state governments are:

- payments for apprentices when they start and end an apprenticeship
- wage subsidies
- business and work skill vouchers
- scholarships
- accommodation allowances
- mature aged worker incentives
- some WorkSafe injury insurance exemptions

Conditions apply, so visit the Australian apprenticeships website for more information about federal government help.

[australianapprenticeships.gov.au](http://australianapprenticeships.gov.au)

Visit Skills Victoria for information about state government help.  
[skills.vic.gov.au](http://skills.vic.gov.au)

These sites also have information for mid-career or mature-age apprentices.

### Free onsite advice for staff planning

The *Skills for Growth* program offers Victorian Businesses with between 5 and 100 staff to have a workforce planning specialist visit their business to provide a workforce assessment and advice on how to attract and retain skilled staff.

Visit the Small Business Victoria website and search for 'Free Onsite Assistance'  
[business.vic.gov.au](http://business.vic.gov.au)

Casual employees are paid an extra 20-25% (or more depending on the agreement or award) above the base rate of pay to compensate them for not getting the entitlements listed above. Casual staff may feel less important than permanent employees, and may have less interest in the future of the business.

**Apprentices and trainees** Apprentices and trainees in the Australian Apprenticeships scheme are paid a wage and are trained on and off the job. An **apprentice** trains to work in a trade-based job, e.g. a plumber, while a **trainee** learns the skills of a non-trade job such as office work. The federal government offers incentives to employers who employ apprentices and trainees.

Things to keep in mind before setting up an agreement:

- you'll normally have to take the person on for the apprenticeship's full term (usually three years)
- you will also have to release them (fully paid) for trade school, usually weekly or in a 'block', and pay for TAFE trade training. If you employ an under 21-year-old apprentice or trainee, you must register them with the Victorian Skills Commission at [vsc.vic.gov.au](http://vsc.vic.gov.au)

**Paid by invoice: hire staff: labour hire, agency workers and contractors**

**Hiring staff from an employment agency or 'labour hire'** This is where an employment agency employs the worker, and you pay the agency for the use of the worker for agreed hours or a set period. You can hire people at short notice with specific skills or for short or long-term projects. Labour hire workers may not develop a loyalty to your business and may take their knowledge with them.

The agency will pay the worker's wages and other entitlements. They will charge you a commission, agency or finder's fee, which will add extra expense. Your workplace must meet all the usual occupational health and safety standards.

**Hiring contractors** Contractors have specific skills and equipment you can use for a set time, and once they leave, they take their skills and equipment with them. Contractors are often more expensive long-term, but are useful for short-term jobs needing specialised skills or equipment. A contractor or independent contractor usually:

- doesn't receive wages but invoices you for their work
- runs their own businesses with an Australian Business Number (ABN) and has their own insurance (unless they're a 'deemed' employee, see the Watch out box on page 3)
- does a set task, such as painting a fence, designing a computer system or installing shop fittings, and once the task is done, the engagement ends
- can work for more than one customer
- can subcontract their work to others
- has their own equipment or works from their own base

## Minimum wages for employees

**Where do I find minimum wage information?** Up-to-date information about the minimum wage and Pay Scale Summaries is on the [fairwork.gov.au](http://fairwork.gov.au) website.

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### ■ Watch out! Some contractors are 'deemed' employees

Some contractors, independent contractors and subcontractors are 'deemed' employees. This means that even though they work for you as a contractor, you may still need to organise or pay their superannuation, OHS protection and WorkSafe Injury Insurance.

This is a common occurrence on building sites and may also apply to clothing outworkers and other occupations.

To find out if people working for you fall into this category and what you have to do, we recommend professional advice from WorkSafe or the Tax Office.

■ **Who adjusts the minimum wage?** Fair Work Australia will set minimum wages and conditions from 2010. Modern awards will also contain the minimum rates for award-covered employees from 2010.

### Minimum employment conditions for employees

The following minimum conditions are the absolute minimum an employer can offer an employee in Australia. Remember if a more generous award or agreement covers an employee, it overrides the minimum conditions.

Until 31 December 2009 the **Australian Fair Pay and Conditions Standard** ('the Standard') sets the minimum entitlements for all Australian employees. The Standard overrides any less-favourable terms in an individual workplace agreement, collective agreement, award, or common law employment contract.

The Standard sets *five minimum entitlements* for workers:

- basic rates of pay (set under an applicable Australian Pay and Classification Scale) and a guaranteed casual loading of at least 20%
- maximum ordinary working hours of 38 hours a week (which can be averaged over 12 months) and reasonable additional hours
- four weeks annual leave a year, or five weeks for shift workers
- 52 weeks unpaid parental leave
- 10 days paid personal leave a year. All of this can be used for carer's leave, as well as two more days for unpaid carer's leave (per occasion). Also, two days of paid compassionate leave per occasion

From 1 January 2010, the **National Employment Standards (NES)** will replace the Standard. The NES will cover:

- maximum weekly hours
- requests for flexible working arrangements (N.B. can be refused on reasonable business grounds, but must be considered)
- unpaid parental leave and related entitlements
- annual leave (for employees other than casuals)
- personal/carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays
- notice of termination and redundancy pay
- Fair Work Information Statement to be given to the employee

For more information visit the Fair Work Online website ([fairwork.gov.au](http://fairwork.gov.au))

### Five types of leave employees might be entitled to

**Tip:** Table 2 has more details on the type of leave each employee is entitled to.

■ **Public holidays** You can check official public holidays in Victoria on the Business Victoria website (look in the 'resources' section at [business.vic.gov.au](http://business.vic.gov.au)). Your award or agreement with the employee decides if these are paid at normal pay rates, or if penalty rates apply.

■ **Personal leave, including sick and carer's leave** Personal leave covers sick leave and carer's leave. This means employees can take leave if sick or if

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they need to look after someone they care for (for example, a child or elderly relation). The Australian Fair Pay and Conditions Standard sets the minimum entitlements for most employees of 10 days paid personal leave, and after that is used up, two days unpaid carer's leave for each occasion they need it. Personal leave is usually cumulative and accrues from year to year. An employee's workplace agreement, award or common law contract may be more generous than the Standard.

### ■ A family-friendly workplace

Visit the ways2work website for practical advice on how employees and employers can work together to improve work and family balance.  
[ways2work.business.vic.gov.au](http://ways2work.business.vic.gov.au)

■ **Parental leave** Parental leave lets employees take extended absences from work after the birth or adoption of a child, and afterwards return to their job (or a similar job with the same conditions they had before they left).

The Australian Fair Pay and Conditions Standard sets out the minimum entitlement for most Victorian employees, of up to 52 weeks unpaid maternity, paternity or adoption leave. An employee's workplace agreement, award or common law contract may set out a higher entitlement, including a period of paid leave.

■ **Bereavement or compassionate leave** The Australian Fair Pay and Conditions Standard sets a minimum two days paid compassionate leave for most employees, when a member of the employee's immediate family or household contracts or develops a life-threatening personal illness, sustains a life-threatening personal injury, or dies.

■ **Long service leave (LSL)** Full-time, part-time and casual and seasonal employees are entitled to long service leave after working a qualifying period. The *Long Service Leave Act 1992* (Victorian legislation) covers many Victorian employees. However, the LSL Act doesn't apply to employees covered by a federal award, a collective agreement, Australian Workplace Agreement or ITEA if the award or agreement has its own LSL provisions.

If your employees are entitled to LSL under Victorian law, they are entitled to **13 weeks paid long service leave after 15 years** continuous service. Alternatively, employees can take a proportionate amount of long service leave after 10 years. (One week accrues for each 60 weeks of continuous employment.) If they resign or you terminate their employment after seven or more years, you must pay them the proportionate amount of long service leave they have accrued.

Workers in the construction and related industries have different arrangements for long service leave. CoINVEST administers a portable LSL scheme for the Victorian construction industry. Check [coinvest.com.au](http://coinvest.com.au) for details.

### Taking a shorter long service leave after 10 years

Since 1 January 2006 employees covered by the Victorian LSL Act can take a proportionate amount of LSL after 10 years (that is, an early, but shorter LSL), at the standard accrual rate of one week for each 60 weeks of continuous employment.

For employees who worked for you before 1 January 2006, you'll need to calculate their 10-year proportionate LSL entitlement date. The leaflet, *What is the entitlement to long service leave?* has a simple set of tables you can use to work out this date. The leaflet can be found under 'Industrial Relations' on the Business Victoria website.

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### Summary of employers' legal obligations

**Table 2:** This table sets out the legal requirements employers must meet for different types of workers

	Permanent employee (full or part-time)	Casual <sup>(a)</sup>	Independent Contractor	Staff from an agency <sup>(b)</sup>	Apprentice or trainee
Minimum rates of pay	yes	yes	no	no	yes
Superannuation	yes <sup>(c)</sup>	yes <sup>(c)</sup>	no <sup>(d)</sup>	no	yes
Penalty rates and loadings	possibly	possibly	no	no	possibly
Study leave, allowances, meal breaks	possibly	possibly	no	no	possibly
Work irregular hours without notice	no	yes <sup>(g)</sup>	possibly	no	no
Paid personal leave (sick and carer's)	yes	no	no	no	yes
Unpaid parental leave (maternity or paternity)	yes (after a qualifying period)	possibly <sup>(a)</sup>	no	no	yes (after a qualifying period)
Minimum four weeks annual leave	yes	no	no	no	yes
Long service leave	yes	possibly <sup>(b)</sup>	no	no	yes
Must be given notice before terminated	yes <sup>(h)</sup>	no	possibly	no	yes
Unfair dismissal laws apply	yes <sup>(e)</sup>	possibly <sup>(f)</sup>	no	no	possibly
Provide a safe and healthy workplace	yes	yes	yes	yes	yes
WorkSafe injury insurance for workers' compensation	yes	yes	possibly <sup>(i)</sup>	no <sup>(i)</sup>	yes
PAYG withholding to the Australian Tax Office (ATO) <sup>(j)</sup>	yes	yes	no	no	yes
Payroll tax to the State Revenue Office <sup>(j)</sup>	possibly	possibly	possibly	possibly	possibly

**Possibly** = can depend on the agreement, contract or circumstances

(a) Some casual workers will get some benefits after a set period. For example, the Victorian *Long Service Leave Act* includes casual and seasonal employees, if continuously employed with one employer. (b) The labour hire agency usually meets these requirements and will add the cost to your arrangements. (c) Only if the employee is paid at least \$450 gross in a calendar month. However, you don't have to make contributions for under 18-year olds working less than 30 hours a week, or for over 70-year-olds. (d) Check with the Tax Office for details, they could be a 'deemed employee'. (e) Unfair dismissal applies to all businesses, but employees have to work for either six or 12 months before they can make a claim, depending on how many employees there are. (f) Depends on length of service, check with Fair Work Australia. Casuals may bring unfair dismissal claims if employed regularly for at least 12 months with a reasonable expectation of ongoing employment. (g) Usually have to be employed for a minimum number of hours each shift. Some awards, workplace agreements or common law contracts may guarantee a minimum number of hours per week, e.g. four hours per week. (h) Minimum termination notice depends on the length of service. If the employee is over 45 years old and has worked for the employer for at least two years, add an extra week. No notice (or payment in lieu) is required if the employee is dismissed for serious misconduct. (i) Check this with WorkSafe Victoria, they might be a 'deemed' employee. (j) Check with the Tax Office for information about PAYG withholding, and State Revenue Office for Payroll Tax.

### Do I have to pay an employee's superannuation?

You must pay 9% of each salaried employee's gross earnings into a superannuation fund or retirement savings account, make the payments at least each quarter, and keep a record of the payments.

For superannuation, the definition of an employee is broad — in some cases you may have to pay a contractor's superannuation. The ATO website has a decision flowchart on the page *Choice of superannuation fund - guide for employers* to help you work out who to pay super for. The website also has a *Superannuation Entitlement Calculator* to work out how much to set aside.

Under the federal *Superannuation Guarantee Act 1993*, you don't pay superannuation to an employee if they are:

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### Watch out!

Please note, that unless the employee leaves, it is illegal for you to pay them the cash value of their long service leave — the employee must take the long service leave break if they're still working with you.

### Free safety consultation session

Victorian businesses with up to 50 employees can register for a free three-hour session with an independent health and safety consultant. The consultant will come to your workplace, help identify safety issues and give you advice.

Call 1800 136 089 or visit [worksafe.vic.gov.au](http://worksafe.vic.gov.au) and search for "free safety consultation"

- paid a salary or wage of less than \$450 in a month, or
- under 18 years of age and work less than 30 hours a week, or
- aged 70 or over

■ **Which superannuation fund and how much?** Employees can choose their own superannuation fund or Retirement Savings Account, unless a fund is prescribed in an enterprise agreement. It's a good idea to have a 'default' fund for workers who don't know where to put their contributions.

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## What are my obligations to keep a safe workplace?

Whether you are employing or hiring staff you are legally required to provide and maintain a safe working environment without health risks for all workers. This means you'll need to identify and manage any workplace hazards to prevent disease, injury or death, including bullying.

WorkSafe Victoria manages Victoria's workplace safety system. It has an advice line and free support to help you make your workplace safe (call 1800 136 089 or visit [worksafe.vic.gov.au](http://worksafe.vic.gov.au)). WorkSafe also offers a **free** three-hour safety consultation session for business with less than 50 employees.

## Do I need WorkSafe Injury Insurance?

WorkSafe Injury Insurance compensates workers and their families if they are injured or killed at work.

You must have WorkSafe Injury Insurance if:

- you pay or expect to pay more than \$7,500 in employees' remuneration per year (including wages, benefits and superannuation)
- you employ apprentices or trainees

In a few cases, WorkSafe classifies a contractor as an employee, and you'll need to pay WorkSafe injury insurance (even if the contractor has a policy). Check with WorkSafe ([worksafe.vic.gov.au](http://worksafe.vic.gov.au)).

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## What records do employers need to keep?

As an employer, the federal *Workplace Relations Act 1996* requires you to keep and maintain records of the dates and hours your employees work for you and how much they're paid. It also requires you to give employees regular pay slips with these details, as a hard copy or in electronic form. The Fair Work Ombudsman's website ([fwo.gov.au](http://fwo.gov.au)) has free templates with easy-to-follow explanations of what to do.

Good record keeping makes sure you pay workers correctly. It also gives you useful information to forecast future costs. Other records you're obliged to keep for your employees include:

- start and end date of employment, contract end date
- what agreement governs their employment (for example, award, workplace agreement, contract)
- start and finish times of overtime hours worked for employees entitled to overtime penalty rates or loadings, or both
- how much unused leave employees have
- superannuation fund and contribution details

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### Discrimination in the workplace: what forms can it take?

Discrimination can happen during recruitment, promotion or retrenchment.

What this means, for example, is there are some questions you are simply not allowed to ask during the recruitment process, such as "are you married?"

Under Victorian law, it is illegal for employers to discriminate in employment based on:

- age
- breastfeeding
- carer status
- disability/impairment
- gender identity
- employment activity
- industrial activity
- lawful sexual activity
- marital status
- parental status
- physical features
- political belief or activity
- sex
- sexual orientation
- personal association with someone who has, or is assumed to have, one of these personal characteristics

## Equal opportunity, sexual harassment and bullying

### Discrimination: Who can I employ?

You can employ anyone with the right to work in Australia. However, it is against the law to treat an employee or potential employee less favourably because of a personal characteristic protected by equal opportunity laws. A potential or current worker who feels they have been discriminated against on the grounds listed in the box on the left can go to the Victorian Equal Opportunity and Human Rights Commission and lodge a complaint.

Discrimination can occur during recruitment, promotion, dismissal or retrenchment. In Victoria, both Victorian and Commonwealth laws protect workers from discrimination on other grounds, such as age and disability. In some cases, Victorian laws will apply, in others, only Commonwealth laws apply. This will depend on the circumstances of each case.

If you're unsure about what is discrimination, check with the Victorian Equal Opportunity and Human Rights Commission — they have easy-to-read information for employers at [humanrightscommission.vic.gov.au](http://humanrightscommission.vic.gov.au) Contact details are on page 13. The information sheet *Equal Opportunity – your rights and responsibilities* also has more details.

A **word of caution** for when employees return to work. Coming back to work from maternity, paternity or other types of extended leave is a major event for the employee. If they resume work in a new position, use extra care when you make the arrangements — make sure the new role is as similar to the old role as practicable.

### Sexual harassment is against the law

Sexual harassment is against the law. Sexual harassment is unwelcome conduct of a sexual nature that could make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal, visual or written. The Victorian Equal Opportunity and Human Rights Commission handles complaints ([humanrightscommission.vic.gov.au](http://humanrightscommission.vic.gov.au)). If an employee comes to you with concerns, handle it sensitively and quickly. It may be wise to seek advice on your next steps from the Victorian Equal Opportunity and Human Rights Commission or a legal practitioner.

### Bullying in the workplace

Workplace bullying is repeated, unreasonable behaviour directed toward an employee or group of employees (including managers and supervisors) that creates a risk to either mental or physical health or safety. Employers are legally obliged to do as much as is practical to eliminate or reduce the risks to employees' health and safety.

Employees are also legally responsible for how they act toward others in the workplace. WorkSafe deals with complaints, as workplace bullying is an occupational health and safety issue. For more details, visit [worksafe.vic.gov.au](http://worksafe.vic.gov.au) or contact WorkSafe directly.

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### Industrial relations laws

The legal basis for the federal government's new workplace relations system is the *Fair Work Act 2009*.

### Two federal industrial relations organisations with limited roles and life spans

The **Workplace Authority** will have a limited role until 31 January 2010.

Until then the authority will assess collective agreements made before 1 July 2009, and Individual Transitional Employment Agreements (ITEAs) made up to 31 December 2009.

**Australian Industrial Relations Commission (AIRC)** is active until 31 December 2009 to complete its work on modernising Australia's awards.

Fair Work Australia will handle all other AIRC functions from 1 July 2009.

## The new workplace relations system from 1 July 2009

The federal government has recently replaced the industrial relations system based on WorkChoices with the new Fair Work system. Parts of the Fair Work regime are yet to come into effect, including the National Employment Standards and modern awards, which will begin on 1 January 2010.

As a summary the new workplace relations system makes these changes:

### from 1 July 2009:

- changes to unfair dismissal laws (the 100-employee rule will no longer apply, replaced by new small business qualifying periods)
- "enterprise agreements" replace "collective agreements after 1 July". This is basically a name-change, and won't affect agreements now in place
- new right of entry rules and permits for union officials
- good faith rules for enterprise bargaining, e.g. parties will be required to attend meetings, and share information in a timely manner
- two new federal workplace agencies with three new websites: Fair Work Online, Fair Work Australia and the Fair Work Ombudsman (for details of what each does, see Table 3.)

### from 1 January 2010:

- modernised national awards system with wide coverage 'modern awards'
- Better Off Overall Test (BOOT) replaces the No Disadvantage Test (NDT)
- all enterprise agreements have to pass the BOOT when compared to the applicable modern award
- individual workplace agreements (ITEAs – the temporary replacement for Australian Workplace Agreements) can no longer be made
- 10 National Employment Standards (NES) replace the Australian Fair Pay and Conditions Standard

Visit or contact the Fair Work Online for more details at [fairwork.gov.au](http://fairwork.gov.au)

## Fair Work Online, Fair Work Australia and the Fair Work Ombudsman from 1 July 2009

**Table 3:** Australia's new industrial relations organisations and websites.

Fair Work Online 13 13 94 <a href="http://fairwork.gov.au">fairwork.gov.au</a>	<ul style="list-style-type: none"> <li>• website is an excellent starting point and resource for employers, employees and contractors</li> <li>• information and advice about Australia's workplace relations system</li> </ul>
Fair Work Ombudsman 13 13 94 <a href="http://fwo.gov.au">fwo.gov.au</a>	<ul style="list-style-type: none"> <li>• assists in disputes over wages</li> <li>• provides tools, advice and information for small businesses</li> <li>• replaces the Workplace Authority's general advisory service, and the Workplace Ombudsman</li> </ul>
Fair Work Australia 1300 799 675 <a href="http://fwa.gov.au">fwa.gov.au</a>	<ul style="list-style-type: none"> <li>• national workplace relations tribunal</li> <li>• processes enterprise agreements</li> <li>• processes termination of agreements</li> <li>• sets minimum wages and employment conditions</li> <li>• issues entry permits to union officials, and handles disputes about lawful entry</li> <li>• handles industrial disputes</li> <li>• handles disputes about unfair dismissal</li> <li>• replaces the Australian Industrial Relations Commission (AIRC) and the Australian Fair Pay Commission</li> </ul>

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### A quick guide to awards and workplace agreements

#### What role do awards play in Victorian businesses?

Awards still play an important role in Victoria. Most Victorian businesses are covered by an award in one of the following ways:

- the award lists your business as a 'respondent' to the award; or your business belongs to an organisation listed by the award, for example, the Retail and Wholesale Industry Association; or
- the award applies as a 'common rule award' to your industry, that is, the award applies to all employers and their employees in an industry. The award does not need to list individual businesses for them to be covered; or
- you take over the business of an employer covered by an award in one of the above ways.

You can search for a specific award on the Fair Work Australia website, or to find out which award covers your employees, call the Fair Work Ombudsman on 13 13 94. For more details and draft copies of modern awards coming into force from 1 January 2010, visit [airc.gov.au/awardmod](http://airc.gov.au/awardmod)

#### Common law employment contracts

Common law contracts are individual employment agreements between employees and employers, with legal obligations for both sides. A contract is no more than mutual promises made by two or more people, enforced by law. In a work context, the most obvious form these mutual promises take is the employee's promise to work in return for an employer's promise to pay wages.

Contracts may be less formal than awards or other formal workplace agreements. For example, a common law contract may be in writing, oral, or partly writing and oral. Because oral contracts often suffer from uncertainty, it's recommended they be put in writing.

Common law employment contracts, as a minimum, must meet or exceed each condition in an applicable award. The Australian Fair Pay and Conditions Standard also overrides any less favourable terms in a common law contract. You or your lawyer can draft a common law employment contract. Common law contracts are often short one or two-page letters of offer. The Business Victoria website has a free template you can download (do a search for 'letter of offer template'), visit [business.vic.gov.au](http://business.vic.gov.au)

#### What happens after the ITEA expires?

ITEAs can only be made until 31 December 2009, and must have a 'nominal' expiry date (the expiry date written on the agreement) before or on this date.

If an ITEA passes its nominal expiry date, and ITEA isn't terminated, the employment conditions under the ITEA continue. The exception is where a collective or enterprise agreement is made in its place.

#### Individual Transitional Employment Agreements (ITEAs)

■ **What are ITEAs?** The government introduced Individual Transitional Employment Agreements (ITEAs) on 28 March 2008 to replace Australian Workplace Agreements (AWAs). Only employers who meet the strict eligibility criteria can make ITEAs in the transition period, ending 31 December 2009. Table 4 summarises some common options for employers. An ITEA must pass the No Disadvantage Test, and match or exceed an applicable award, collective or enterprise agreement.

■ **How to make and lodge an ITEA** The first step is to find out if you are eligible to make an ITEA. If so, you need to determine if an award, enterprise agreement or collective agreement already applies to the worker, and make sure

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the new ITEA meets or exceeds what these offer. If you need help to find which award or agreement applies to your workers, call 13 13 94. **The Workplace Authority will accept ITEAS until 31 December 2009.** The Workplace Authority explains the steps in the *Make an ITEA Checklist* on its website. **Make sure you follow the steps carefully or risk lodging an invalid agreement.** For under-18 employees, the employee's parent or guardian must also sign the ITEA.

**Table 4:** Workplace and enterprise agreements, and common law employment contracts you can negotiate with employees until 31 December 2009, and how previous AWAs affect when ITEAs can be made.

If the employer...	...then one these agreements can be negotiated with a new or existing employee (or employees)		
	Individual Transitional Employment Agreement (ITEA) <sup>(a)</sup>	Common law employment contract	Enterprise agreement <sup>(b)</sup>
had one or more employees on an AWA made on or before 1 December 2007 <sup>(c)</sup>	yes <sup>(d)</sup>	yes	yes <sup>(e)(f)</sup>
had one or more employees on an AWA made after 1 December 2007 (and none before then)	no	yes	yes
is employing staff for the first time today, or employees were on a collective or common law agreement before or after 1 December 2007	no	yes	yes

This table is for quick reference only. In all cases, the employer and the employee must be entitled to make workplace agreements. **Please check your circumstances** with Fair Work Australia or a professional adviser. For ITEAs contact the Workplace Authority or a professional adviser.

(a) ITEAs can be made and lodged with the Workplace Authority until 31 December 2009. After that individual agreements cannot be made.

(b) Enterprise agreements replaced collective agreements on 1 July 2009. Lodge enterprise agreements with Fair Work Australia. This is basically a name-change, and won't affect agreements now in place.

(c) Or a Victorian employment agreement made under the *Employee Relations Act 1992 (Vic)* (repealed).

(d) For all new employees, and with existing employees, if they were on an AWA as at 1/12/07.

(e) If the employee is still on an AWA and the AWA has not passed its nominal expiry date, then a new enterprise agreement can't apply to that employee until the AWA is terminated.

(f) If a collective agreement (or post 1 July 2009 enterprise agreement) already applies at the workplace, it will cover a new employee. The employer could also offer a common law contract that meets or exceeds all of the terms and conditions in the collective or enterprise agreement; or make an ITEA.

### Enterprise agreements (replace collective agreements from 1 July 2009)

These replaced collective agreements on 1 July 2009. Fair Work Australia will use the NDT (see next page) to assess Enterprise Agreements until the end of 2009. After 1 January 2010, the Better Off Overall Test (BOOT) will be used to assess enterprise agreements.

The major new features of enterprise agreements are that they must have:

- an expiry date of four years or less
- a dispute settlement procedure
- a flexibility term so the employee and you can agree to vary the agreement to meet your mutual needs if you need to
- a consultation term. This requires you consult with employees about major workforce changes

## Employing or hiring people

For information on enterprise agreements and how to make and lodge them visit the Fair Work Online website [fairwork.gov.au](http://fairwork.gov.au), and look for the section 'What do I need to know about agreements?'

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### The No Disadvantage Test (NDT)

The NDT is applied to all ITEAs, and collective agreements made or varied after 28 March 2008. It will also be applied to enterprise agreements made between 1 July 2009 and 31 December 2009. On 1 January the Better Off Overall Test (BOOT) replaces the NDT.

■ **How does the NDT work?** The NDT is a test to see if ITEAs or enterprise agreements when compared to an applicable award, won't disadvantage the employee. If no award applies, the Australian Fair Pay and Conditions Standard is used. Note that Fair Work Australia will assess enterprise agreements using the NDT until 31 December 2009, and after that, use the BOOT. The authority will process ITEAs until 31 January 2010, and then be disbanded. For more information about the NDT visit the Fair Work Online website ([fairwork.gov.au](http://fairwork.gov.au)).

#### ■ What is 'unlawful termination'?

Unlawful termination is when you:

- dismiss an employee or make them redundant due to various forms of discrimination
- when you fail to give proper notice
- when you dismiss 15 or more employees without first notifying Centrelink

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### Unfair dismissal and unlawful termination

#### When does 'unfair dismissal' apply?

Unfair dismissal occurs when there's no reasonable reason for the dismissal, or you have not given the employee a warning or a fair chance to improve their performance (depending on how serious the conduct is), or a fair hearing. Another form of unfair dismissal may occur if the employer makes a position redundant, retrenches the employee and shortly after, then hires a new employee to do the same duties.

From 1 July 2009 the employee will be able to claim unfair dismissal if the business employs:

- **less than 15 staff** (full-time equivalent staff, excluding irregular casuals), and the employee has worked there for **12 months** or more
- **15 or more staff** (full-time equivalent staff, excluding irregular casuals), and the employee has worked there for **six months** or more

The *Small Business Fair Dismissal Code* applies to businesses with fewer than 15 employees (excluding irregular casuals) from 1 July 2009 (under the *Fair Work Act*). If you follow this Code, you will have a strong defence to an unfair dismissal claim.

**Tip:** Although not legally required, use the *Small Business Fair Dismissal Code Checklist* as your guide to the right procedure. Keep completed copies and records of meetings and discussions as a record you've done the right thing. You can find a copy by doing a search for 'dismissal code' on the Fair Work Online website ([fairwork.gov.au](http://fairwork.gov.au))

N.B. After 1 January 2011 the way employees are counted changes from full-time equivalent to a simple headcount (excluding irregular casuals). Call Fair Work Australia on 1300 799 675 for more details about unfair dismissal.

## Employing or hiring people

### Buying a business with existing employees

Some employee responsibilities and liabilities will move to the new business owner on buying a business with existing employees. These include some apprenticeship or trainee agreements, long service leave and claims made by employees against the business, including dismissal, discrimination and WorkSafe claims.

Some other common questions when buying a business are:

- Am I legally obliged to keep the existing employees? If yes, do I have to pay their current wages if they are above award?
- If I don't want to keep some or all employees, how do I legally terminate their employment?
- Who is responsible for redundancy payments – the last owner or me?

When workers transfer to a new owner, their awards and workplace agreements normally carry across to the new owner. The procedures for termination and redundancy payments you make, depend on what agreements were in place before the sale, and employment law. This can be a complex legal area, so professional advice is advisable.

### Handling disputes

Depending on what the dispute is about, a federal or Victorian law will cover it. Your best starting point is to contact Fair Work Australia or the Fair Work Ombudsman. The Workplace Authority will handle some disputes about existing agreements until these agencies are disbanded near the start of 2010.

**Table 3:** The federal and Victorian organisations handling workplace disputes

Organisation	Type of dispute the organisation deals with
<i>Federal</i>	
Fair Work Ombudsman	For employees and employers. For breaches of the <i>Fair Work Act</i> , the <i>Workplace Relations Act</i> (such as contraventions of the Australian Fair Pay and Conditions Standard or time and wages record-keeping requirements), or breach of an award or workplace agreement (such as claims of underpayment, incorrect calculation of leave entitlements or non-payment of penalty rates).
Fair Work Australia	Termination of employment (unfair dismissal) claims. Can also deal with industrial disputes between employers and employees in some instances, and disputes involving industrial action. Right-of-entry permits for union officials.
<i>Victorian</i>	
Workforce Victoria	Long service leave, owner drivers, child employment and outworker issues.
Office of the Small Business Commissioner	For Victorian owner-drivers, forestry contractors, disputes between landlords and tenants of retail premises.
Victorian Equal Opportunity and Human Rights Commission	Discrimination complaints. If not resolved at conciliation, these may proceed to the Victorian Civil and Administrative Tribunal.
Victorian Civil and Administrative Tribunal (VCAT)	Discrimination (also handles many other non-work related disputes).
Civil legal system, e.g. Magistrates Court	Common law employment contracts and recovery proceedings for long service leave, outworker underpayment claims etc.

## Employing or hiring people

### Contacts for useful information and support

All small business enquiries	Office of Small Business Visit the Victorian Consumer and Business Centre Ground Floor, 113 Exhibition Street, Melbourne VIC 3000 <b>13 22 15</b> TTY (telephone typewriter) Service (03) 9651 7596 For your nearest Victorian Business Centre call 13 22 15	business.vic.gov.au      business.vic.gov.au/vbc
Excellent starting point for general information for employers, employees and contractors	Fair Work Online: website coming information from Fair Work Australia and the Fair Work Ombudsman	fairwork.gov.au
- Deals with workplace agreements under the <i>Workplace Relations Act, Fair Work Act</i> - Administers the No Disadvantage Test - Online list of awards - Sets federal minimum wage - Deals with industrial disputes, agreements, dismissals, unlawful terminations, federal awards	Fair Work Australia Level 4, 11 Exhibition Street, Melbourne, 3000 GPO Box 1994, Melbourne, 3001 1300 799 675	fwa.gov.au
Federal statutory agency responsible for compliance with federal workplace relations laws, such as breaches of minimum entitlements	Fair Work Ombudsman GPO Box 9887, Melbourne VIC 3000 13 13 94	fwo.gov.au
Employing apprentices and trainees	Skills Victoria Department of Innovation, Industry and Regional Development PO Box 266, Melbourne, VIC 3001 (03) 9651 9999	skills.vic.gov.au
WorkSafe injury insurance, WorkSafe information, OHS training, workplace safety, and enquiries about workplace bullying	WorkSafe Victoria Ground Floor, 222 Exhibition Street, Melbourne VIC 3000 (03) 9641 1444 or 1800 136 089	worksafe.vic.gov.au
- Long service leave enquiries - Child employment enquiries - Programs for family-friendly and better performing workplaces - Owner Drivers, forestry contractors, outworkers	Workforce Victoria Level 33, 121 Exhibition Street, Melbourne VIC 3000 1800 287 287 or (03) 9651 9200  For child employment enquiries, ask to speak to a Child Employment Officer	workforce.vic.gov.au
Enquiries, disputes and complaints about discrimination and sexual harassment, or bullying if discrimination is involved	Victorian Equal Opportunity and Human Rights Commission Level 3, 380 Lonsdale Street, Melbourne VIC 3000 (03) 9281 7111 or 1800 134 142	humanrightscommission.vic.gov.au
- Goods and Services Tax (GST) - Pay As You Go withholding (PAYG) - Superannuation (reporting) - Online <i>Checklist for new business</i>	Australian Taxation Office (ATO) Casselden Place, 2 Lonsdale Street, Melbourne VIC 3000 For your nearest ATO office, check the ATO website Business tax enquiries 13 28 66	ato.gov.au
Disputes about retail tenancy, owner drivers and forestry contractors	Office of the Victorian Small Business Commissioner (VSBC) Level 2, 121 Exhibition Street, Melbourne, VIC 3000 1800 136 034	sbc.vic.gov.au
- Workplace consulting and services - Business training - Represents employer interests to government	Victorian Employers' Chamber of Commerce and Industry Industry House, 486 Albert Street, Melbourne VIC 3002 (03) 8662 5333	vecci.org.au

#### For more information:

- call Business Victoria on 13 22 15
- visit the Business Victoria website at [business.vic.gov.au](http://business.vic.gov.au)
- visit a Victorian Business Centre (VBC). For a list of VBC locations, go to [business.vic.gov.au/vbc](http://business.vic.gov.au/vbc)

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