

WORKERS' RIGHTS

WHAT ARE THE DIFFERENT WAYS OF WORKING



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Permanent

A permanent full-time worker usually works 38 hours a week on a continual and regular basis. A permanent part-time worker also works continuous and regular hours but works less than 38 hours per week. Permanent employees have continuity of employment, an expectation of ongoing work and are entitled to paid leave, such as annual leave, personal leave (including sick leave and carer's leave), and parental leave (after 12 months continuous service). Part time employees will accrue these benefits on a pro rata basis.

Permanent employees are also entitled to receive a minimum period of notice if their job ends. This is based on the employee's length of service and must be given in writing.

Casual

A casual worker is usually employed on a short term basis. Their employment is temporary and irregular and there is no guarantee of ongoing work. Casual workers are not usually entitled to notice of termination, redundancy payments, paid annual leave, paid sick leave, paid carer's leave, or parental leave (however, there may be an entitlement to parental leave if the employee has at least 12 months of regular and systematic employment and a reasonable expectation of the employment continuing). In compensation for this, casual workers are paid an extra loading on top of the hourly rate that would be payable to a full or part time employee performing the same job (most modern awards provide 25% more). This casual loading is prescribed in a relevant award, enterprise agreement or by the National Minimum Wage Order. Casuals are entitled to worker's compensation, and may be entitled to superannuation. Casuals may also be entitled to long service leave if they have worked for a sufficient period for the same employer.

If you are a casual and you work very regular and consistent hours (for example, if you work to a regular roster), and you have a reasonable expectation that work will continue you may be eligible for the right to make an unfair dismissal claim.

Pieceworker

Pieceworkers are generally paid on the basis of results achieved or components produced (e.g. a fruit picker paid on a rate per bucket of fruit picked). In this situation, you may be paid piece rates instead of the rate of pay that would otherwise apply to you under an award or an enterprise agreement. The total amount paid must not be less than that which would otherwise apply and you are also covered by the minimum conditions in the National Employment Standards.

What is a fixed term contract?

Fixed term contracts have an agreed beginning and end and are used when an employer only needs an employee for a specified time or specified task/project. They end on the date or event specified by the employer and employee at the commencement of the contract period. Employment automatically ends when the contract ends. Ongoing employees are different in that their employment has no previously agreed end date or event and can only end with termination of employment.

Are you an employee or independent contractor?

There is a legal difference between being an employee, and being a contractor, or self-employed. Sometimes this can be quite unclear. It is important to get advice on this, as the legal definition is complex and affects your pay and entitlements. It is important to note that independent contractors are not covered by the National Employment Standards, are not covered by worker's compensation and cannot make a claim for unfair dismissal.

It is important to look at all of the circumstances of the work arrangement to decide whether someone is an employee or a contractor. Generally, contractors use their own tools, have their own insurance and can decide how they will do a job and what they will charge.

If you answer 'yes' to the following questions, you may be an independent contractor:

- Are you conducting a business in your own right, or do you appear to the general public to be working on behalf of the person for whom you perform the work?
- Do you control the way the work is to be done?
- Can you sub-contract the work to others outside the organisation?
- Do you have the option of performing work for a variety of people rather than just performing work for only one person or business?
- Are you paid on a fixed price basis on the completion of the task (whatever time it takes)?
- Do you supply special equipment or tools for the job?
- Do you have your own worker's compensation and public liability insurance?
- Do you pay your own tax?

If you are not sure, you should get further advice, and don't sign any contract before getting advice.

Are you an outworker?

If you do paid work in a private home (away from your employer's workplace) you may be considered to be an outworker. Outwork can include clerical work, sewing, computer processing, child care, and food preparation. There are many outworkers in the clothing industry who work at home or outside a factory making garments or parts of garments. As an outworker you are entitled to the same wages and conditions as workers in clothing factories. You may be covered by an award, or an agreement. You are also covered by the minimum conditions in the National Employment Standards.

Some outworkers in the clothing industry do not always know who contracted them to do the work but may know which company the work is being done for. If you have not been paid correctly for the work you have done and are unsure as to who should pay you, a claim can be lodged with the Fair Work Ombudsman against the company who you believe ordered the work.

Where can I get more help?

Your union

SA Unions
Ph: (08) 8279 2222
www.saunions.org.au

Working Women's Centre

Ph: 1800 652 697
www.wwc.org.au

1st Floor, Station Arcade
52 Hindley Street
Adelaide, SA, 5000

Legal Services Commission

Ph: 1300 366 424
www.lsc.sa.gov.au

82-98 Wakefield Street
Adelaide SA 5000

Young Workers Legal Service

Ph: (08) 8279 2233
www.ywls.org.au

Fair Work Australia (FWA)

Ph: 1300 799 675
www.fwa.gov.au

Level 6, Riverside Centre,
Nth Terrace, Adelaide, 5000

PO Box 8072
Station Arcade, Adelaide, 5000

Telephone: (08) 8308 9863
Facsimile: (08) 8308 9864
Out of hs emergency: 0419 563 601
Email: adelaide@fwa.gov.au

Fair Work Ombudsman (FWO)

Ph: 13 13 94
www.fairwork.gov.au

Level 2, 148 Frome St.
Adelaide SA, 5000

Fair Work Ombudsman Complaints Assessment Team

GPO Box 2567, Adelaide, SA, 5001

Telephone Interpreter Service

Ph: 13 14 50



Legal disclaimer: The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The information contained in this publication within the FWO's jurisdiction as set out in the Fair Work Act 2009 is: general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on 10 June 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information. This material has been funded by the Australian Government through a Fair Work Ombudsman initiative to produce educative materials on the Fair Work Act.