Western Australia

Minimum Conditions of Employment Act 1993

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Minimum Conditions of Employment Act 1993

An Act to provide for minimum conditions of employment for employees in Western Australia and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Minimum Conditions of Employment Act 1993*.

2. Commencement

This Act comes into operation on the day on which the *Workplace Agreements Act 1993* [1] comes into operation.

3. Terms used

(1) In this Act, unless the contrary intention appears —

annual leave means leave provided for under Division 3 of Part 4;

apprentice has the same meaning as in the IR Act;

award means an award made under the IR Act and includes any industrial agreement or order of the Commission under that Act;

continuous service means service under an unbroken contract of employment and includes any period of leave or absence authorised by the employer or by an employer-employee agreement, an award, a contract of employment or this Act;

employee means —

(a) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or

(b) a person whose usual status is that of an employee;

employer has the same meaning as in the IR Act;

employer-employee agreement means an employer-employee agreement under Part VID of the IR Act;

industrial instrument means an award or employer-employee agreement;

IR Act means the *Industrial Relations Act 1979*;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

member of the employee's family or household means any of the following persons —

(a) the employee's spouse or de facto partner;

(b) a child, step-child or grandchild of the employee (including an adult child, step-child or grandchild);

(c) a parent, step-parent or grandparent of the employee;

(d) a sibling of the employee;

(e) any other person who, at or immediately before the relevant time for assessing the employee's eligibility to take leave, lived with the employee as a member of the employee's household;

minimum condition of employment means —

(aa) the requirement as to maximum hours of work prescribed by Part 2A; or

(a) a rate of pay prescribed by this Act; or

(b) a requirement as to pay, other than a rate of pay, prescribed by this Act; or

(c) a condition for leave prescribed by this Act; or

(d) the use, in manner prescribed by this Act, of a condition for leave prescribed by this Act; or

(e) a condition prescribed by Part 5; or

(f) the requirement as to confidentiality prescribed by section 39E(1);

public holiday, in respect of an area in the State, means a day mentioned in Schedule 1 that is a public holiday in that area.

(2) In this Act a reference to a period worked does not include a reference to a period outside the hours the employee was required ordinarily to work during which the employee was on call.

(3) For the purposes of subsection (2), the employee was ***on call*** in a period if, in that period the employee was required —

(a) to remain at the employee's place of employment; or

(b) to be available to undertake duties of employment,

but was not required to undertake any other duty of employment.

[Section 3 amended: No. 79 of 1995 s. 66(5); No. 58 of 1996 s. 4; No. 20 of 2002 s. 22(2), 164 and 177; No. 28 of 2003 s. 144; Gazette 15 Aug 2003 p. 3688; No. 36 of 2006 s. 4 and 28; No. 22 of 2008 Sch. 3 cl. 36; No. 44 of 2008 s. 56(2)-(3); No. 35 of 2010 s. 116; No. 30 of 2021 s. 100 and 121(1).]

4. Application to Crown

This Act binds the Crown.

Part 2 — Application of minimum conditions

5. Minimum conditions implied in awards etc.

(1) The minimum conditions of employment extend to and bind all employees and employers and are taken to be implied —

(a) in an industrial instrument; or

(b) if a contract of employment is not governed by an industrial instrument — in that contract.

(2) A provision in, or condition of, an employer-employee agreement, an award or a contract of employment that is less favourable to the employee than a minimum condition of employment has no effect.

(3) A provision in, or condition of, an agreement or arrangement that purports to exclude the operation of this Act has no effect, but without prejudice to other provisions or conditions of the agreement or arrangement.

(4) A purported waiver of a right under this Act has no effect.

(5) This section has effect subject to section 8.

[Section 5 amended: No. 20 of 2002 s. 22(3)-(4); Gazette 15 Aug 2003 p. 3688; No. 30 of 2021 s. 101.]

6. Application offshore

(1) Where under section 3 of the IR Act that Act applies to and in relation to employers and employees in any industry carried on wholly or partly in an offshore area —

(a) this Act applies to those employers and employees; and

(b) subsection (4) of that section applies with all necessary changes for the purposes of this Act.

(2) In subsection (1), ***offshore area*** means the areas referred to in section 3(3) of the IR Act.

[Section 6 amended: No. 20 of 2002 s. 177.]

7. Enforcement of minimum conditions

A minimum condition of employment may be enforced under the IR Act section 83 —

(a) as an entitlement provision; or

(b) if the condition is implied in an industrial instrument — as a provision of the instrument.

[Section 7 amended: No. 30 of 2021 s. 102.]

8. Cashing out of accrued annual leave

(1) After the completion of any year of service by an employee, the employer and employee may agree that the employee may forgo taking annual leave to which the employee became entitled in relation to that year of service if —

(a) the amount of annual leave forgone does not exceed 50% of the whole amount of annual leave to which the employee became entitled in relation to that year of service; and

(b) the employee is given an equivalent benefit in lieu of the amount of annual leave forgone; and

(c) the agreement is in writing, signed by the employer and the employee.

(2) An agreement referred to in subsection (1) is of no effect if the employer's offer of employment was made on the condition that the employee would be required to enter into the agreement.

(3) The employer must not —

(a) require the employee to forgo taking an amount of annual leave; or

(b) exert undue influence or undue pressure on the employee in relation to the making of a decision by the employee whether or not to forgo taking an amount of annual leave.

(4) A contravention of subsection (3) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E of the IR Act.

[Section 8 amended: No. 20 of 2002 s. 165(1) and (2); No. 36 of 2006 s. 29; No. 30 of 2021 s. 103.]

*[**9.** Deleted: No. 30 of 2021 s. 104.]*

Part 2A — Reasonable hours of work

[Heading inserted: No. 36 of 2006 s. 5.]

9A. Maximum hours of work

(1) An employee is not to be required or requested by an employer to work more than —

(a) either —

(i) the employee's ordinary hours of work as specified in an industrial instrument that applies to the employment of the employee; or

(ii) if there is no industrial instrument that specifies the employee's ordinary hours of work, 38 hours per week;

and

(b) reasonable additional hours as determined under section 9B.

(2) For the purpose of subsection (1), in calculating the number of hours that an employee has worked in a particular week, the hours worked by the employee are taken to include any hours of authorised leave taken by the employee during the week.

(3) Nothing in this section, or section 5(2), restricts the number of ordinary hours of work that may be specified in an industrial instrument.

(4) In this section —

authorised leave means leave, or an absence, whether paid or unpaid, that is authorised —

(a) by an employee's employer; or

(b) by or under a term or condition of an employee's employment; or

(c) by or under a law, or an instrument in force under a law, of the State or the Commonwealth.

[Section 9A inserted: No. 36 of 2006 s. 5; amended: No. 30 of 2021 s. 105.]

9B. Reasonable additional hours

(1) For the purposes of section 9A(1)(b), in determining whether additional hours that an employee is required or requested by an employer to work are reasonable additional hours, all relevant factors are to be taken into account.

(2) The factors that may be taken into account include, but are not limited to, the following —

(a) any risk to the employee's safety and health that might reasonably be expected to arise if the employee worked the additional hours;

(b) the employee's personal circumstances (including family responsibilities);

(c) the conduct of the operations or business in relation to which the employee is required or requested to work the additional hours;

(d) any notice given by the employer of the requirement or request that the employee work the additional hours;

(e) any notice given by the employee of the employee's intention to refuse to work the additional hours;

(f) whether any of the additional hours are on a public holiday in the area of the State where the employee is required or requested to work;

(g) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

[Section 9B inserted: No. 36 of 2006 s. 5; amended: No. 30 of 2021 s. 106.]

Part 3 — Minimum rates of pay

[Heading inserted: No. 20 of 2002 s. 167.]

Division 1 — General

[Heading inserted: No. 30 of 2021 s. 107.]

10. Entitlement of employees to be paid minimum rate of pay

(1) Except as provided in section 16, an employee is entitled to be paid, for each hour worked by the employee in a week, the minimum weekly rate of pay applicable to the employee under section 12, 13 or 14, divided by 38.

(2) Nothing in this section prevents an industrial instrument from providing for minimum rates of pay for an employee with a disability.

[Section 10 inserted: No. 20 of 2002 s. 167; amended: No. 30 of 2021 s. 108.]

11. Minimum rate of pay for casual employees includes loading

(1) A casual employee is entitled to be paid the amount which the employee is entitled to be paid under section 10 plus the prescribed percentage of that amount.

(2) In subsection (1) —

prescribed percentage means —

(a) 20%; or

(b) if a percentage higher than 20% is set by order under section 51I of the IR Act for the purposes of this section, that percentage.

[Section 11 inserted: No. 20 of 2002 s. 167; amended: No. 30 of 2021 s. 121(2).]

12. Minimum weekly rate of pay for employees aged 21 or more

The minimum weekly rate of pay applicable at a particular time to an employee —

(a) who has reached 21 years of age; and

(b) who is not an apprentice,

is the rate in effect at that time under section 50A(1)(a)(i) of the IR Act in relation to employees who have reached 21 years of age and who are not apprentices.

[Section 12 inserted: No. 20 of 2002 s. 167; amended: No. 36 of 2006 s. 21(2); No. 44 of 2008 s. 56(4).]

13. Minimum weekly rate of pay for employees aged under 21

The minimum weekly rate of pay applicable at a particular time to an employee —

(a) who is of the age mentioned in the first column in the Table to this section; and

(b) who is not an apprentice,

is the percentage, set out opposite that age in the second column in the Table, of the rate referred to in section 12 in effect at that time, rounded up to the nearest 10 cents.

Table

Age	Percentage of 21 year old rate
20 years	90%
19 years	80%
18 years	70%
17 years	60%
16 years	50%
Under 16 years	40%

[Section 13 inserted: No. 20 of 2002 s. 167; amended: No. 44 of 2008 s. 56(5).]

14. Minimum weekly rates of pay for apprentices

The minimum weekly rate of pay applicable at a particular time to an employee who is an apprentice —

(a) in the case where a rate is in effect at that time under section 50A(1)(a)(ii) of the IR Act in relation to the class of apprentice to which the employee belongs, is that rate;

(b) otherwise, is the rate in effect at that time under section 50A(1)(a)(ii) of the IR Act in relation to apprentices generally.

[Section 14 inserted: No. 20 of 2002 s. 167; amended: No. 36 of 2006 s. 21(3).]

Division 2 — Employees with disabilities

[Heading inserted: No. 30 of 2021 s. 109.]

15. Terms used

In this Division —

employee with a disability means an employee whose productive capacity —

(a) has been assessed under —

(i) the SWS; or

(ii) a supported wage industrial instrument provision;

and

(b) is assessed as being reduced because of a disability;

instrument-free employee with a disability means an employee —

(a) whose contract of employment is not governed by an industrial instrument; and

(b) whose productive capacity has been assessed under the SWS as being reduced because of a disability;

instrument-governed employee with a disability means an employee —

(a) whose contract of employment is governed by an industrial instrument that includes a SWIIP that incorporates the SWS; and

(b) whose productive capacity has been assessed under the SWS as being reduced because of a disability; and

(c) who is not employed by a supported employment service as defined in the *Disability Services Act 1986* (Commonwealth) section 7; and

(d) who is being paid a weekly rate of pay determined by the SWS under the SWIIP;

supported wage industrial instrument provision or ***SWIIP*** means a provision of an industrial instrument that —

(a) applies to an employee with a disability; and

(b) provides a means (a ***wage assessment tool***) for the assessment of whether, and the extent to which, the employee's productive capacity is reduced because of the disability; and

(c) provides that the employer may pay a wage that —

(i) relates to the employee's productive capacity as assessed using the wage assessment tool; and

(ii) may be less than the applicable minimum wage in the industrial instrument;

Supported Wage System or ***SWS*** means the scheme known by that name established by the Commonwealth Government to enable the assessment of whether, and the extent to which, a person's productive capacity is reduced because of a disability.

[Section 15 inserted: No. 30 of 2021 s. 109.]

16. Application of Act to employee with disability

(1) Section 10 does not apply to an employee with a disability who has been assessed under the SWS or a SWIIP and is being paid a rate of pay in accordance with that assessment.

(2) A person eligible to be employed under the SWS may be employed under its provisions for the purposes of this Act.

[Section 16 inserted: No. 30 of 2021 s. 109.]

17. Minimum pay for employee with disability

(1) This section applies to the following —

(a) an instrument-free employee with a disability;

(b) an instrument-governed employee with a disability;

(c) an employee who is employed for a trial period for the purpose of an assessment under the SWS as to whether the employee will become an employee referred to in paragraph (a) or (b).

(2) Except as provided in subsection (3), the minimum amount payable for each week worked by the employee is an amount not less than the amount in effect at that time under the IR Act section 50A(1)(a)(iii), regardless of the number of hours worked by the employee during the relevant week.

(3) An instrument-free employee with a disability is entitled to be paid the higher of the following amounts —

(a) for each hour worked by the employee in a week, an amount calculated by —

(i) determining the weekly rate of pay applicable to the employee by reference to the percentage of the rate referred to in section 12 that corresponds to the employee's assessed productive capacity under the SWS, rounded up to the nearest 10 cents; and

(ii) dividing that weekly rate by 38;

(b) the amount referred to in subsection (2).

[Section 17 inserted: No. 30 of 2021 s. 109.]

Part 3A — Other requirements as to pay

[Heading inserted: No. 79 of 1995 s. 66(6).]

17A. Terms used

(1A) In this Part —

party related, to an employer or prospective employer, means a relative of the employer or prospective employer;

relative, of an employer, means —

(a) each of the following people, whether the relationship is established by, or traced through, consanguinity, marriage, a de facto relationship, a written law or a natural relationship —

(i) a parent, grandparent or other ancestor;

(ii) a step-parent;

(iii) a sibling;

(iv) an uncle or aunt;

(v) a cousin;

(vi) a spouse or de facto partner;

or

(b) in the case of an employer who is an Aboriginal person or Torres Strait Islander — a person regarded under the customary law or tradition of the employer's community as the equivalent of a person mentioned in paragraph (a).

(1) A reference in this Part to an employee includes a reference to any person in any manner employed for wages in work of any kind or in manual labour.

(2) In subsection (1), ***wages*** includes any money or thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration.

(3) A reference in this Part to the contract of employment only applies if the contract is in writing.

[Section 17A inserted: No. 79 of 1995 s. 66(6); amended: No. 30 of 2021 s. 110.]

17B. Employee not to be compelled to accept other than money for pay

(1) An employee is not to be directly or indirectly compelled by an employer to accept, instead of money as any part of the employee's pay —

(a) goods of any kind; or

(b) accommodation or other services of any kind.

(2) In proceedings under the IR Act section 83 to enforce an entitlement provision, anything given or provided by the employer contrary to subsection (1) is to be treated as if it had never been given or provided.

[Section 17B inserted: No. 30 of 2021 s. 111.]

17BA. Employees and prospective employees not to be unreasonably compelled to spend or pay amount

(1) An employer must not directly or indirectly require an employee to spend, or pay to the employer or another person, an amount of the employee's money or the whole or any part of an amount payable to the employee in relation to the performance of work, if —

(a) the requirement is unreasonable in the circumstances; and

(b) in the case of a payment — the payment is directly or indirectly for the benefit of the employer or a party related to the employer.

(2) An employer (the ***prospective employer***) must not directly or indirectly require another person (the ***prospective employee***) to spend, or pay to the prospective employer or any other person, an amount of the prospective employee's money if —

(a) the requirement is in connection with employment or potential employment of the prospective employee by the prospective employer; and

(b) the requirement is unreasonable in the circumstances; and

(c) in the case of a payment — the payment is directly or indirectly for the benefit of the prospective employer or a party related to the prospective employer.

(3) The regulations may prescribe circumstances in which a requirement referred to in subsection (1) or (2) is or is not reasonable.

(4) A contravention of subsection (1) or (2) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.

(5) In proceedings under the IR Act section 83E for a contravention of subsection (1), an industrial magistrate's court may, as an alternative, determine that a contravention of an entitlement provision has occurred for the purposes of the IR Act section 83.

(6) If the industrial magistrate's court determines that an employer has contravened subsection (1) or (2) in respect of an employee or prospective employee, the industrial magistrate's court may order the employer to pay to the employee or prospective employee compensation for any loss or injury suffered as a result of the contravention.

(7) The industrial magistrate's court may make an order under subsection (6) in addition to imposing a penalty under section 83E.

(8) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term —

(a) permits, or has the effect of permitting, an employer to make a requirement that would contravene subsection (1); or

(b) directly or indirectly requires an employee to spend or pay an amount, if the requirement would contravene subsection (1) if it had been made by an employer.

(9) In proceedings under the IR Act section 83 to enforce an entitlement provision, any amount that the employee has been required to spend or pay contrary to subsection (1), or in accordance with a term to which subsection (8) applies, is taken to be a deduction, from an amount payable to the employee, made by the employer otherwise than in accordance with section 17D.

[Section 17BA inserted: No. 30 of 2021 s. 112.]

17C. Employee's pay, methods of payment

(1) An employee is entitled to be paid in full and payment is to be made —

(a) in cash; or

(b) by cheque, postal order or money order payable to the employee; or

(c) by payment into an account, specified by the employee, with a bank or financial institution; or

(d) in any other manner authorised or required under the employer-employee agreement, award or contract of employment.

(2) In the case of any employee who is not employed by the Crown, payment can be made under subsection (1)(b) or (c) if, and only if, the employee so authorises.

(3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.

(4) In proceedings under the IR Act section 83E for a contravention of subsection (1), an industrial magistrate's court may, as an alternative, determine that a contravention of an entitlement provision has occurred for the purposes of the IR Act section 83.

(5) In proceedings under the IR Act section 83 to enforce an entitlement provision, anything given or provided by the employer contrary to subsection (1) is taken never to have been given or provided to the employee.

[Section 17C inserted: No. 79 of 1995 s. 66(6); amended: No. 20 of 2002 s. 22(7); Gazette 15 Aug 2003 p. 3688; No. 30 of 2021 s. 113.]

17D. Authorised deductions from pay

(1) Despite section 17C, an employer may deduct from an employee's pay —

(a) an amount the employer is authorised, in writing, by the employee to deduct and pay on behalf of the employee; and

(b) an amount the employer is authorised to deduct and pay on behalf of the employee under the employer-employee agreement, award or contract of employment; and

(c) an amount the employer is authorised or required to deduct by order of a court or under a law of the State or the Commonwealth.

(2) The employee is entitled to have any amount so deducted paid by the employer in accordance with the employee's instructions or in accordance with the requirements of the employer-employee agreement, award, contract of employment, court order or law of the State or the Commonwealth (as the case may be).

(3) Nothing in this section requires an employer to make deductions requested by an employee.

(4) An employee may, by giving written notice to the employer, withdraw an authorisation under subsection (1)(a).

[Section 17D inserted: No. 79 of 1995 s. 66(6); amended: No. 20 of 2002 s. 22(7); amended: Gazette 15 Aug 2003 p. 3688.]

17E. Certain terms of no effect

(1) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work, if the deduction is —

(a) directly or indirectly for the benefit of the employer or a party related to the employer; and

(b) unreasonable in the circumstances.

(2) The regulations may prescribe circumstances in which a deduction referred to in subsection (1)(b) is or is not reasonable.

(3) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee who has not reached 18 years of age in relation to the performance of work by the employee, unless the deduction is agreed to in writing by a parent or guardian of the employee.

(4) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term requires, or has the effect of requiring, an employee who has not reached 18 years of age to make a payment to an employer or another person, unless the payment is agreed to in writing by a parent or guardian of the employee.

[Section 17E inserted: No. 30 of 2021 s. 114.]

Part 4 — Minimum leave conditions

Division 1 — Preliminary

18. Paid leave, how pay calculated

(1) Except as provided in subsection (3B), where leave is paid leave, payment is to be made at the rate the employee would have received as payment at the time the leave is taken under the employer-employee agreement, award or contract of employment.

(2) If the number of hours for which an employee is entitled to be paid for a period of leave cannot be determined, the total number of hours worked under the employer-employee agreement, award or contract of employment during the period prescribed in subsection (2A) immediately before the time the leave is taken are to be averaged as hours worked each week for the purpose of payment for the leave.

(2A) For the purposes of subsection (2), the period prescribed is the shorter of the following —

(a) a period totalling 365 days;

(b) the period of employment.

(3) Payment for overtime, penalty rates or any kind of allowance is not required to be taken into account in determining any rate of payment for the purposes of this section.

(3A) Subsection (3) does not apply to prevent casual loading payable under an employer-employee agreement, award or contract of employment from being taken into account in determining the rate of pay for bereavement leave under section 27.

(3B) An employee paid wholly by commission or percentage reward or at piece rates is entitled to be paid the highest of the following for a period of leave —

(a) a rate payable under an employer-employee agreement, award or contract of employment for a period of leave;

(b) a rate calculated according to the employee's average weekly earnings over a period totalling 365 days immediately before the time the leave is taken;

(c) the applicable minimum rate of pay under section 10.

(3C) For the purposes of subsection (2) and (3B)(b), the following periods must be disregarded —

(a) any period of unpaid leave;

(b) any period during which there is a standing-down of the employee in accordance with the provisions of —

(i) an award or a determination under the IR Act; or

(ii) the *Fair Work Act 2009* (Commonwealth) or an enterprise agreement under that Act; or

(iii) any other enactment.

(4) Matters in relation to payment for leave under this Part or Part 5 may be prescribed by the regulations.

[Section 18 amended: No. 20 of 2002 s. 22(7); Gazette 15 Aug 2003 p. 3688; No. 30 of 2021 s. 115 and 121(3).]

Division 2 — Personal leave

[Heading inserted: No. 30 of 2021 s. 116.]

19. Personal leave

In this Part —

personal circumstances, in relation to an employee, means —

(a) personal illness or injury affecting —

(i) the employee; or

(ii) a member of the employee's family or household;

(b) an unexpected emergency affecting a member of the employee's family or household;

personal leave, in relation to an employee, means leave taken by the employee —

(a) because of personal circumstances affecting the employee; or

(b) to provide care or support to a member of the employee's family or household because of personal circumstances affecting the member.

[Section 19 inserted: No. 30 of 2021 s. 116.]

20. Entitlement to paid personal leave

(1) In this section —

year does not include any period of unpaid leave.

(2) An employee, other than a casual employee, is entitled for each year of service to paid personal leave for the number of hours the employee is required ordinarily to work in a 2 week period during that year, up to 76 hours.

(3) Paid personal leave accrues pro rata on a weekly basis.

(4) Entitlements to paid personal leave are cumulative.

(5) Except as provided in subsection (6), the employee may take paid personal leave if the employee is unable to work as a result of personal circumstances.

(6) The employee is not entitled to be paid for any period of absence from work resulting from personal circumstances involving personal illness or injury affecting the employee if the circumstances are attributable to either of the following in the course of the employee's employment —

(a) the employee's serious and wilful misconduct; or

(b) the employee's gross and wilful neglect.

[Section 20 inserted: No. 30 of 2021 s. 116.]

21. Entitlement to unpaid personal leave

(1) An employee is entitled to unpaid personal leave of up to 2 days for each occasion (a ***permissible occasion***) in which personal circumstances arise.

(2) An employee is entitled to unpaid personal leave for a particular permissible occasion only if —

(a) the permissible occasion comprises a circumstance referred to in paragraphs (a)(ii) and (b) of the definition of ***personal circumstances*** in section 19; and

(b) the employee cannot take paid personal leave during the period under section 20.

[Section 21 inserted: No. 30 of 2021 s. 116.]

22. Certain matters as to personal leave not minimum conditions

Nothing in this Division requires —

(a) personal leave to be taken as a whole working day; or

(b) an employer to pay an employee instead of the employee's untaken entitlement under section 20, on the termination of the employee's employment.

[Section 22 inserted: No. 30 of 2021 s. 116.]

22A. Employee to prove entitlements to personal leave

An employee who claims to be entitled to paid personal leave or unpaid personal leave under this Division must provide to the employer evidence that would satisfy a reasonable person of the entitlement.

[Section 22A inserted: No. 30 of 2021 s. 116.]

Division 3 — Annual leave

23. Paid annual leave, entitlement to

(1) An employee, other than a casual employee, is entitled for each year of service, to paid annual leave for the number of hours the employee is required ordinarily to work in a 4 week period during that year, up to 152 hours.

(2) An entitlement under subsection (1) accrues *pro rata* on a weekly basis.

(2a) Entitlements under subsection (1) are cumulative.

(3) In subsection (1), ***year*** does not include any period of unpaid leave.

(4) Subsection (1) does not apply to an employee of a class prescribed by the regulations.

[Section 23 amended: No. 20 of 2002 s. 173(1); No. 36 of 2006 s. 34.]

24. Annual leave payments, when to be made

(1) An employee is to be paid for a period of annual leave at the time payment is made in the normal course of the employment, unless the employee requests in writing that the employee be paid before the period of leave commences in which case the employee is to be so paid.

(2) If —

(a) an employee lawfully leaves employment; or

(b) an employee's employment is terminated by the employer through no fault of the employee,

before the employee has taken annual leave to which the employee is entitled, the employee is to be paid for all of that annual leave.

(3) If —

(a) an employee leaves employment; or

(b) that employment is terminated by the employer,

in circumstances other than those referred to in subsection (2) before the employee has taken annual leave to which the employee is entitled, the employee is to be paid for any untaken leave that relates to a completed year of service, except that if the employee is dismissed for misconduct, the employee is not entitled to be paid for any untaken leave that relates to a year of service that was completed after the misconduct occurred.

(4) In this section —

year does not include any period of unpaid leave.

[Section 24 amended: No. 3 of 1997 s. 39; No. 30 of 2021 s. 121(2) and (3).]

25. Annual leave, when may be taken

(1) Where an employer and an employee have not agreed when the employee is to take annual leave, subject to subsection (2), the employer is not to refuse the employee taking, at any time suitable to the employee, any period of annual leave the entitlement to which accrued more than 12 months before that time.

(2) The employee is to give the employer at least 2 weeks' notice of the period during which the employee intends to take leave.

[Section 25 amended: No. 30 of 2021 s. 121(3).]

26. General Order as to annual leave of no effect

The General Order prescribing minimum conditions as to annual leave under section 50(5) [2] of the IR Act in force at the commencement of this Act is of no effect after the commencement.

[Section 26 amended: No. 20 of 2002 s. 177.]

Division 4 — Bereavement leave

27. Paid bereavement leave, entitlement to

(1) Subject to section 28, on the death of a member of an employee's family or household the employee is entitled to paid bereavement leave of up to 2 days.

(2) The 2 days need not be consecutive.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

[Section 27 amended: No. 28 of 2003 s. 146; No. 36 of 2006 s. 35.]

28. Proof of entitlement may be required

An employee who claims to be entitled to paid leave under section 27(1) is to provide to the employer, if so requested by the employer, evidence that would satisfy a reasonable person as to —

(a) the death that is the subject of the leave sought; and

(b) the relationship of the employee to the deceased person.

Division 5 — Public holidays

*[**29.** Deleted: No. 36 of 2006 s. 6.]*

30. Public holidays, entitlement to pay for

An employee, other than a casual employee, who in any area of the State is not required to work on a day solely because that day is a public holiday in that area, is entitled to be paid as if the employee were required to work on that day.

[Section 30 amended: No. 30 of 2021 s. 121(2).]

31. Penalty rates for work on public holidays not a minimum condition

Section 30 is not to be read as requiring an employer to pay a penalty rate in respect of work done on a public holiday.

Division 6 — Parental leave

32. Terms used

(1) In this Division —

adoption, in relation to a child, is a reference to a child who —

(a) is not the child or the step-child of the employee or the employee's spouse or de facto partner; and

(b) is less than 5 years of age; and

(c) has not lived continuously with the employee for 6 months or longer;

employee does not include a casual employee who is not eligible as described in subsection (2) or (3);

expected date of birth means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse or de facto partner, as the case may be, to give birth to a child;

parental leave means leave provided for by section 33(1).

(2) A casual employee is ***eligible*** if the employee —

(a) has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and

(b) but for an expected birth of a child to the employee or the employee's spouse or de facto partner or an expected placement of a child with the employee with a view to the adoption of the child by the employee, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

(3) Without limiting subsection (2), a casual employee is also ***eligible*** if —

(a) the employee was engaged by a particular employer on a regular and systematic basis for a sequence of periods during a period (the ***first period of employment***) of less than 12 months; and

(b) at the end of the first period of employment, the employee ceased, on the employer's initiative, to be so engaged by the employer; and

(c) the employer later again engaged the employee on a regular and systematic basis for a further sequence of periods during a period (the ***second period of employment***) that started not more than 3 months after the end of the first period of employment; and

(d) the combined length of the first period of employment and the second period of employment is at least 12 months; and

(e) the employee, but for an expected birth of a child to the employee or the employee's spouse or de facto partner or an expected placement of a child with the employee with a view to the adoption of the child by the employee, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

[Section 32 amended: No. 20 of 2002 s. 22(6); No. 28 of 2003 s. 147; No. 36 of 2006 s. 36; amended: Gazette 15 Aug 2003 p. 3688.]

33. Unpaid parental leave, entitlement to

(1) Subject to sections 35, 36(1) and 37(1), an employee is entitled to take up to 52 consecutive weeks of unpaid leave in respect of —

(a) the birth of a child to the employee or the employee's spouse or de facto partner; or

(b) the placement of a child with the employee with a view to the adoption of the child by the employee.

(2) An employee is not entitled to take parental leave unless the employee —

(a) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and

(b) has given the employer at least 10 weeks' written notice of the employee's intention to take the leave.

(3) An employee is not entitled to take parental leave at the same time as the employee's spouse or de facto partner but this subsection does not apply to one week's parental leave taken by the employee and the employee's spouse or de facto partner immediately after —

(a) the birth of the child; or

(b) a child has been placed with them with a view to their adoption of the child.

(4) An employee may request the employer to extend the period of parental leave to which the employee is entitled under subsection (1) for a further consecutive period of not more than 52 consecutive weeks.

(5) An employee may request the employer to extend the period of parental leave which the employee is entitled under subsection (3) to take at the same time as the employee's spouse or de facto partner for a further consecutive period of not more than 7 consecutive weeks.

(6) The entitlement of an employee to parental leave is reduced by any period of parental leave taken by the employee's spouse or de facto partner in relation to the same child, except —

(a) the period of one week's leave referred to in subsection (3); or

(b) if a request to extend the period of one week's leave referred to in subsection (3) is agreed to by the employer, that period as so extended.

(7) If a request to extend the period of an employee's parental leave is agreed to by the employer, the reference in subsection (6) to the employee's entitlement to parental leave is a reference to that extended entitlement.

[Section 33 amended: No. 28 of 2003 s. 148 and 150; No. 36 of 2006 s. 37; No. 30 of 2021 s. 121(1) and (2).]

34. Maternity leave to start 6 weeks before birth

A female employee who is pregnant and has given notice of her intention to take parental leave is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the employee is fit to work.

[Section 34 amended: No. 28 of 2003 s. 149.]

35. Employee to prove entitlement to parental leave

An employee who has given notice of the employee's intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the employee or the employee's spouse or de facto partner, as the case may be, is pregnant and the expected date of birth.

[Section 35 amended: No. 28 of 2003 s. 150; No. 30 of 2021 s. 121(1).]

36. Employee to notify employer of spouse's parental leave

(1) An employee who has given notice of the employee's intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the employee's spouse or de facto partner in relation to the same child.

(2) Any notice given under subsection (1) is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.

[Section 36 amended: No. 28 of 2003 s. 150; No. 30 of 2021 s. 121(1).]

37. Parental leave period, notice to employer of etc.

(1) An employee who has given notice of the employee's intention to take parental leave is to notify the employer of the dates on which the employee wishes to start and finish the leave.

(2) An employee who is taking parental leave is to notify the employer of any change to the date on which the employee wishes to finish the leave.

(3) The starting and finishing dates of a period of parental leave are to be agreed between the employee and employer.

[Section 37 amended: No. 30 of 2021 s. 121(1).]

38. Return to work after parental leave

(1) On finishing parental leave, an employee is entitled to the position the employee held immediately before starting parental leave.

(2) If the position referred to in subsection (1) is not available, the employee is entitled to an available position —

(a) for which the employee is qualified; and

(b) that the employee is capable of performing,

most comparable in status and pay to that of the employee's former position.

(3) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in subsection (1), that subsection applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

(4) An employee may request the employer to permit the employee, on finishing parental leave, to work on a modified basis in a position to which the employee is entitled under subsection (1) or (2).

(5) If, on finishing parental leave, an employee has been permitted by the employer to work on a modified basis in a position to which the employee is entitled under subsection (1) or (2), the employee may subsequently request the employer to permit the employee to resume working on the same basis as the employee worked immediately before starting parental leave.

(6) If, on finishing parental leave, an employee has been permitted by the employer to work on a modified basis in a position to which the employee is entitled under subsection (1) or (2), the employer may subsequently, if entitled to do so under subsection (7)(a) or (b), require the employee to resume working on the same basis as the employee worked immediately before starting parental leave.

(7) A requirement can be made under subsection (6) if, and only if —

(a) the requirement is made on grounds relating to the adverse effect that the employee continuing to work on a modified basis would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person; or

(b) the employee no longer has a child who has not reached the compulsory education period as defined in section 6 of the *School Education Act 1999*.

(8) In subsections (4) to (7) —

modified basis means a basis that involves the employee working —

(a) on different days or at different times, or both; or

(b) on fewer days or for fewer hours, or both,

than the employee worked immediately before starting parental leave.

(9) If —

(a) before the employee started parental leave a change took place in the days on which, times at which or hours for which the employee worked; and

(b) the change was a direct result of the employee's pregnancy,

a reference in subsection (5), (6) or (8) or section 38A(5) or (7) to how the employee worked immediately before starting parental leave is a reference to the employee's work immediately before the change took place.

[Section 38 amended: No. 36 of 2006 s. 38; No. 30 of 2021 s. 121(1) and (2).]

38A. How and when a request or requirement as to parental leave or return to work can be made

(1) A request under section 33(4) or (5) or 38(4) or (5) is to be made by notice in writing.

(2) A request under section 33(4) is to be made at least 4 weeks before the day on which the employee finishes the period of parental leave to which the employee is entitled under section 33(1).

(3) A request under section 33(5) can be made at any time before the end of the week referred to in section 33(3).

(4) A request under section 38(4) is to be made at least 7 weeks before the day on which the employee finishes parental leave.

(5) A request under section 38(5) is to be made at least 6 weeks before the day on which the employee wishes to resume working on the same basis as the employee worked immediately before starting parental leave.

(6) Subject to subsection (2), (3) or (4), whichever is applicable, a request under section 33(4) or (5) or 38(4) can be made even if the birth or placement occurred before the coming into operation of section 39 of the *Labour Relations Legislation Amendment Act 2006*.

(7) A requirement under section 38(6) is to be made by notice in writing at least 6 weeks before the day on which the employer wishes the employee to resume working on the same basis as the employee worked immediately before starting parental leave, and the notice is to set out the reasons for the requirement.

[Section 38A inserted: No. 36 of 2006 s. 39.]

38B. Grounds for determining a request or making a requirement as to parental leave or return to work

(1) The employer is to agree to a request under section 33(4) or (5) or 38(4) unless —

(a) the employer, having considered the employee's circumstances, is not satisfied that the request is genuinely based on the employee's parental responsibilities; or

(b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person.

(2) The employer is to agree to a request under section 38(5) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person.

(3) The employer is to give the employee written notice of the employer's decision on a request under section 33(4) or (5)

or 38(4) or (5) and, if the request is refused, the notice is to set out the reasons for the refusal.

(4) Without limiting subsection (1) or section 38(7)(a) the grounds on which a refusal under subsection (1)(b), or a requirement under section 38(6), may be based include the following —

(a) cost;

(b) lack of adequate replacement staff;

(c) loss of efficiency;

(d) impact on the production or delivery of products or services by the employer.

(5) If a request is made under section 33(4) or (5) or 38(4) or (5), the subject matter of the request may be enforced as a minimum condition of employment in a manner set out in section 7, and in any enforcement proceedings the onus lies on the employer to demonstrate that the refusal of such a request was justified under subsection (1) or (2), whichever is applicable.

[Section 38B inserted: No. 36 of 2006 s. 39.]

39. Effect of parental leave on service record

Absence on parental leave —

(a) does not break the continuity of service of an employee; and

(b) is not to be taken into account when calculating the period of service for a purpose of a relevant employer-employee agreement, award or contract of employment.

[Section 39 amended: No. 20 of 2002 s. 22(7); amended: Gazette 15 Aug 2003 p. 3688.]

Division 7 — Unpaid family and domestic violence leave

[Heading inserted: No. 30 of 2021 s. 117.]

39A. Terms used

In this Division —

family and domestic violence means family violence as defined in the *Restraining Orders Act 1997* section 5A(1);

family and domestic violence leave means leave required for reasons relating to family and domestic violence.

[Section 39A inserted: No. 30 of 2021 s. 117.]

39B. Entitlement to unpaid family and domestic violence leave

(1) An employee is entitled to 5 days of unpaid family and domestic violence leave in a 12-month period.

(2) Unpaid family and domestic violence leave —

(a) is available in full at the start of each 12-month period of the employee's employment; and

(b) does not accumulate from year to year; and

(c) is available in full to part-time and casual employees.

(3) For the purposes of subsection (2), the start of an employee's employment is taken to be the start of the employee's first employment with that employer if the employee is employed by a particular employer —

(a) as a casual employee; or

(b) for a specified period of time, for a specified task or for the duration of a specified season.

(4) The employee may take unpaid family and domestic violence leave as —

(a) a single continuous 5 day period; or

(b) separate periods of 1 or more days each; or

(c) any separate periods to which the employee and the employer agree, including periods of less than 1 day.

(5) Unpaid family and domestic violence leave can only be taken in accordance with section 39C.

(6) Nothing in this section prevents the employee and the employer agreeing that the employee may take more than 5 days of unpaid leave to deal with the impact of family and domestic violence.

[Section 39B inserted: No. 30 of 2021 s. 117.]

39C. Taking unpaid family and domestic violence leave

The employee may take unpaid family and domestic violence leave if —

(a) the employee is experiencing family and domestic violence; and

(b) the employee needs to do something to deal with the impact of the family and domestic violence; and

(c) it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

[Section 39C inserted: No. 30 of 2021 s. 117.]

39D. Employee to prove entitlements to unpaid family and domestic violence leave

An employee who claims to be entitled to unpaid family and domestic violence leave under this Division must, if required by the employer, provide to the employer evidence that would satisfy a reasonable person of the entitlement.

[Section 39D inserted: No. 30 of 2021 s. 117.]

39E. Confidentiality

(1) Employers must take steps to ensure information concerning any notice or evidence an employee has given of the employee

taking leave under this Division is treated confidentially, as far as it is reasonably practicable to do so.

(2) Nothing in this Division prevents an employer from disclosing information provided by an employee if the disclosure is required by a written law or is necessary to protect the life, health or safety of the employee or another person.

[Section 39E inserted: No. 30 of 2021 s. 117.]

Part 5 — Minimum conditions for employment changes with significant effect, and redundancy

40. Terms used

(1) In this Part —

employee does not include a casual employee or an apprentice;

redundant means being no longer required by an employer to continue doing a job because the employer has decided that the job will not be done by any person.

(2) For the purposes of this Part, an action of an employer has a significant effect on an employee if —

(a) there is to be a major change in the —

(i) composition, operation or size of; or

(ii) skills required in,

the employer's work-force that will affect the employee; or

(b) there is to be elimination or reduction of —

(i) a job opportunity; or

(ii) a promotion opportunity; or

(iii) job tenure,

for the employee; or

(c) the hours of the employee's work are to significantly increase or decrease; or

(d) the employee is to be required to be retrained; or

(e) the employee is to be required to transfer to another job or work location; or

(f) the employee's job is to be restructured.

[Section 40 amended: No. 20 of 2002 s. 174; No. 44 of 2008 s. 56(7).]

41. Employee to be informed

(1) Where an employer has decided to —

(a) take action that is likely to have a significant effect on an employee; or

(b) make an employee redundant,

the employee is entitled to be informed by the employer, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be, and discuss with the employer the matters mentioned in subsection (2).

(2) The matters to be discussed are —

(a) the likely effects of the action or the redundancy in respect of the employee; and

(b) measures that may be taken by the employee or the employer to avoid or minimize a significant effect,

as the case requires.

42. Employer not bound to disclose prejudicial information

Nothing in this Act requires an employer, when providing information or holding a discussion under section 41(1) to disclose information that may seriously harm —

(a) the employer's business undertaking; or

(b) the employer's interest in the carrying on, or disposition, of the business undertaking.

43. Paid leave for job interviews, entitlement to

(1) An employee, other than a seasonal worker who has been informed that the employee has been, or will be, made redundant is entitled to paid leave of up to 8 hours for the purpose of being interviewed for further employment.

(2) The 8 hours need not be consecutive.

(3) An employee who claims to be entitled to paid leave under subsection (1) is to provide to the employer evidence that would satisfy a reasonable person of the entitlement.

(4) Payment for leave under subsection (1) is to be made in accordance with section 18.

[Section 43 amended: No. 20 of 2002 s. 175; No. 30 of 2021 s. 121(2).]

[Part 6: s. 44, 45 deleted: No. 30 of 2021 s. 118; s. 46 deleted: No. 36 of 2006 s. 42.]

Part 7 — Regulations

47. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Part 8 — Transitional provisions for *Industrial Relations Legislation Amendment Act 2021*

[Heading inserted: No. 30 of 2021 s. 119.]

48. Term used: commencement day

In this Part —

commencement day means the day on which the *Industrial Relations Legislation Amendment Act 2021* section 100 comes into operation.

[Section 48 inserted: No. 30 of 2021 s. 119.]

49. Employees with disabilities

(1) In this section —

assessment means assessment of an employee's productive capacity under the SWS as defined in section 15;

assessment period means a period starting on the commencement day and ending on the earlier of the following —

(a) the day on which an assessment of the employee's productive capacity is completed for the purposes of determining the employee's minimum rate of pay under section 17(3)(a);

(b) the day that is 6 months after the commencement day.

(2) This section applies to a person who, immediately before the commencement day, was an employee with a disability whose contract of employment was not governed by an industrial instrument.

(3) During the assessment period the employee is entitled to be paid, for each week worked by the employee, the higher of the following —

(a) the employee's weekly wage immediately before the commencement day;

(b) the amount referred to in section 17(2).

(4) If the employee's assessment is completed, and the employee's wage is determined, within the assessment period, subsection (3) ceases to apply to the employee on the day of completion.

(5) If the employee is not assessed, or the employee's assessment is not completed, within the assessment period, then on and after the expiry of the assessment period the employee is entitled to be paid in accordance with section 10(1) until such time as the employee's productive capacity is determined, on an assessment, to be reduced by a disability.

[Section 49 inserted: No. 30 of 2021 s. 119.]

50. "Under rate employee" provisions in awards

(1) In this section —

assessment means assessment of an employee's productive capacity under the SWS or a SWIIP, as those terms are defined in section 15;

assessment period means the period ending 6 months after the commencement day;

pre-commencement day wage means the weekly wage that an under rate employee was entitled to be paid immediately before the commencement day;

under rate employee means an employee who was, immediately before the commencement day, entitled to be paid under an under rate employee provision by reason of infirmity;

under rate employee provision means a provision in an award to the effect that an employee who by reason of old age or infirmity is unable to earn the minimum wage may be paid a lesser wage as is agreed in writing between a union and the employer.

(2) On and from the commencement day each under rate employee provision is of no effect to the extent to which it applies to an

employee who by reason of infirmity or old age is unable to earn the minimum wage.

(3) During the assessment period, an under rate employee is entitled to be paid, for each week worked by the employee, the higher of the following amounts —

(a) the employee's pre-commencement day wage;

(b) the amount referred to in section 17(2).

(4) If an employee's assessment is completed, and the employee's wage is determined, within the assessment period, subsection (3) ceases to apply to the employee on the day of completion.

(5) If an employee is not assessed, or the employee's assessment is not completed, within the assessment period, then on and after the expiry of the assessment period the employee is entitled to be paid in accordance with the rate of pay applicable under the award until such time as the employee's productive capacity is determined, on an assessment, to be reduced by a disability.

[Section 50 inserted: No. 30 of 2021 s. 119.]

Schedule 1 — Public holidays

[s. 3(1)]

[Heading amended: No. 19 of 2010 s. 4; No. 53 of 2011 s. 50.]

The following are public holidays —

New Year's Day.

Australia Day.

Labour Day.

Good Friday.

Easter Sunday.

Easter Monday.

Anzac Day.

Western Australia Day.

Celebration Day for the anniversary of the birthday of the reigning Sovereign (the day appointed by proclamation published in the *Gazette* under the *Public and Bank Holidays Act 1972*).

Christmas Day.

Boxing Day.

Any special day appointed by proclamation under the *Public and Bank Holidays Act 1972* section 7 to be a public holiday.

[Schedule 1 amended: No. 74 of 2003 s. 84; No. 53 of 2011 s. 50; No. 3 of 2012 s. 7; No. 30 of 2021 s. 120.]

Notes

This is a compilation of the *Minimum Conditions of Employment Act 1993* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Minimum Conditions of Employment Act 1993	14 of 1993	23 Nov 1993	s. 1 and 2: 23 Nov 1993; Act other than s. 1 and 2: 1 Dec 1993 (see s. 2 and *Gazette* 30 Nov 1993 p. 6439)
Industrial Relations Legislation Amendment and Repeal Act 1995 s. 64 and 66(5) and (6)	79 of 1995	16 Jan 1996	s. 64: 16 Jan 1996 (see s. 3(1)); s. 66(5) and (6): 18 May 1996 (see s. 3(2) and *Gazette* 14 May 1996 p. 2019)
Minimum Conditions of Employment Amendment Act 1996	58 of 1996	11 Nov 1996	1 Dec 1993 (see s. 3)
Labour Relations Legislation Amendment Act 1997 s. 39	3 of 1997	23 May 1997	23 May 1997 (see s. 2(1))
Reprint of the *Minimum Conditions of Employment Act 1993* as at 4 Jun 1997 (includes amendments listed above)			
Labour Relations Reform Act 2002 s. 22 and Pt. 10 Div. 1	20 of 2002	8 Jul 2002	Pt. 10 Div. 1: 1 Aug 2002 (see s. 2 and *Gazette* 26 Jul 2002 p. 3459); s. 22: 15 Sep 2002 (see s. 2 and *Gazette* 6 Sep 2002 p. 4487)
Reprint of the *Minimum Conditions of Employment Act 1993* as at 4 Oct 2002 (includes amendments listed above)			
Acts Amendment (Equality of Status) Act 2003 Pt. 45	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 9 published in *Gazette* 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
Statutes (Repeals and Minor Amendments) Act 2003 s. 84	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 [3]	84 of 2004 (as amended by No. 2 of 2008 s. 78(3))	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 3: The *Minimum Conditions of Employment Act 1993* as at 5 May 2006 (includes amendments listed above)			
Labour Relations Legislation Amendment Act 2006 Pt. 2, s. 21 and Pt. 6 [4]	36 of 2006	4 Jul 2006	4 Jul 2006 (see s. 2(1))
Medical Practitioners Act 2008 Sch. 3 cl. 36	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Reprint 4: The *Minimum Conditions of Employment Act 1993* as at 13 Jun 2008 (includes amendments listed above except those in the *Medical Practitioners Act 2008*)			
Training Legislation Amendment and Repeal Act 2008 s. 56	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 36	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6)
Industrial Legislation Amendment Act 2011 Pt. 4	53 of 2011	11 Nov 2011	1 Apr 2012 (see s. 2(b) and *Gazette* 16 Mar 2012 p. 1246)
Western Australia Day (Renaming) Act 2012 Pt. 2 Div. 2	3 of 2012	10 Apr 2012	11 Apr 2012 (see s. 2(b))
Reprint 5: The *Minimum Conditions of Employment Act 1993* as at 6 Jul 2012 (includes amendments listed above)			
Statutes (Repeals) Act 2016 Pt. 3 Div. 3	50 of 2016	28 Nov 2016	29 Nov 2016 (see s. 2(b))

Short title	Number and year	Assent	Commencement
Industrial Relations Legislation Amendment Act 2021 Pt. 5	30 of 2021	22 Dec 2021	Pt. 5 (other than s. 100-119 and 121): 12 Feb 2022 (see s. 2(1)(b) and SL 2022/10 cl. 2); s. 100-119 and 121: 20 Jun 2022 (see s. 2(1)(b) and SL 2022/79 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Industrial Relations Legislation Amendment Act 2024 Pt. 3	43 of 2024	13 Nov 2024	31 Jan 2025 (see s. 2(c))

Other notes

[1] Expired 14 September 2003.

[2] Deleted by the *Industrial Relations Amendment Act 1993* s. 18(1)(c).

[3] The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Sch. 1 cl. 20 (amendment to s. 46(1)) was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 78(3).

[4] The *Labour Relations Legislation Amendment Act 2006* s. 31(2) reads as follows:

> (2) Nothing in Part 4 Division 2 of the *Minimum Conditions of Employment Act 1993* requires an untaken entitlement that arose under section 19(1) or 20A(1) of that Act as enacted before the commencement of this section to be carried over from the year in which the entitlement arose to the next year.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
adoption	32(1)
annual leave	3(1)
apprentice	3(1)
assessment	49(1), 50(1)
assessment period	49(1), 50(1)
authorised leave	9A(4)
award	3(1)
commencement day	48
continuous service	3(1)
eligible	32(2) and (3)
employee	3(1), 32(1), 40(1)
employee with a disability	15
employer	3(1)
employer-employee agreement	3(1)
expected date of birth	32(1)
family and domestic violence	39A
family and domestic violence leave	39A
first period of employment	32(3)
industrial instrument	3(1)
instrument-free employee with a disability	15
instrument-governed employee with a disability	15
IR Act	3(1)
medical practitioner	3(1)
member of the employee's family or household	3(1)
minimum condition of employment	3(1)
modified basis	38(8)
offshore area	6(2)
on call	3(3)
parental leave	32(1)
party related	17A(1A)
permissible occasion	21(1)
personal circumstances	19
personal leave	19
pre-commencement day wage	50(1)
prescribed percentage	11(2)
prospective employee	17BA(2)
prospective employer	17BA(2)
public holiday	3(1)
redundant	40(1)

relative ..... 17A(1A)
second period of employment ..... 32(3)
supported wage industrial instrument provision 15
Supported Wage System 15
SWIIP 15
SWS 15
under rate employee ..... 50(1)
under rate employee provision ..... 50(1)
wage assessment tool 15
wages ..... 17A(2)
year ..... 20(1), 23(3), 24(4)

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