Western Australia

Minimum Conditions of Employment Act 1993

Compare between:

[31 Jan 2025, 05-g0-00] and [28 Oct 2026, 05-h0-00]

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.

2A. Objects of Act

The objects of this Act are —

(a) to provide for fair and enforceable minimum conditions of employment; and

(b) to assist families to balance work and family responsibilities, including by providing for minimum conditions of employment related to an employee requesting a flexible working arrangement.

[Section 2A inserted: No. 43 of 2024 s. 106.]

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 has the meaning given in the IR Act section 7(1);

Commission has the meaning given in the IR Act section 7(1);

compensated employee has the meaning given in section 18B(1)(b);

compensated employee rate, in relation to a compensated employee, has the meaning given in section 18B(2);

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 industrial instrument, a contract of employment or this Act;

employee has the meaning given in the IR Act section 7(1);

Note for this definition:

See also the IR Act sections 7A and 7B, which apply for the purposes of determining, for this Act, whether an individual is an employee or a casual employee of a person.

employer has the same meaning as in the IR Act;

Note for this definition:

See also the IR Act section 7A, which applies for the purposes of determining, for this Act, whether a person is an employer of an individual.

entitled to receive income compensation, in relation to an employee, has the meaning given in section 18B(1)(a);

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

flexible working arrangement dispute has the meaning given in the IR Act section 51D;

flexible working arrangement request has the meaning given in section 39F(1);

income compensation has the meaning given in the *Workers Compensation and Injury Management Act 2023* section 5;

industrial instrument means —

(a) an award; or

(b) an employer-employee agreement as defined in the IR Act section 7(1); or

(c) an industrial agreement registered under the IR Act Part II Division 2B; or

(d) an order of the Commission under the IR Act;

IR Act means the *Industrial Relations Act 1979*;

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 or the employee's spouse or de facto partner (including an adult child, step-child or grandchild);

(c) a parent, step-parent or grandparent of the employee or the employee's spouse or de facto partner;

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

(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 Part 3; or

(b) a requirement as to pay, other than a rate of pay, prescribed by Part 3A; or

(c) an entitlement prescribed by Part 4 relating to paid personal leave, unpaid personal leave, paid annual leave, paid bereavement leave or unpaid family and domestic violence leave; or

(d) the use, in a manner prescribed by Part 4, of an entitlement to leave referred to in paragraph (c), including in relation to —

(i) taking leave; or

(ii) payment for leave; or

(iii) proof of entitlement to leave;

or

(e) a condition prescribed by Part 5; or

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

(g) an entitlement prescribed by Part 4 relating to a public holiday, including —

(i) to be absent from work on a public holiday; or

(ii) to be paid if absent from work on a public holiday; or

(iii) to refuse (on reasonable grounds) a request to work on a public holiday;

or

(h) an entitlement prescribed by Part 4 relating to a day or part of a day that is substituted for a public holiday; or

(i) an entitlement or obligation prescribed by Part 4A relating to a flexible working arrangement request, including —

(i) an entitlement to make a request in any of the circumstances referred to in section 39F(2); or

(ii) an obligation to respond to that request.

organisation has the meaning given in the IR Act section 7(1);

paid family and domestic violence leave means —

(a) paid family and domestic violence leave to which a non-national system employee is entitled under the *Fair Work Act 2009* (Commonwealth) Part 6-3 Division 2A; or

(b) paid leave for reasons relating to family and domestic violence to which an employee is entitled under an industrial instrument or contract of employment;

public holiday, in relation to an employee, means a day mentioned in Schedule 1 that is a public holiday in the area of the State where the employee is based for work purposes;

year of service does not include any period of unpaid leave.

(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); No. 43 of 2024 s. 107.]

4. Application to Crown

This Act binds the Crown.

Part 2 — Application of minimum conditions

5. Minimum conditions extend to and bind all employers and employees

(1) The minimum conditions of employment extend to and bind all employees and employers and cannot be displaced by an industrial instrument or contract of employment.

(2) A provision in, or condition of, an industrial instrument or a contract of employment that is less favourable to the employee than a minimum condition of employment has no effect and the minimum condition is taken to be the term of the industrial instrument or contract of employment instead.

(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; No. 43 of 2024 s. 108.]

6. Application offshore

(1) Where, under the IR Act section 3, 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) the IR Act section 3(4) 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.

(3) Subsection (1) has effect only where this Act or any provision of this Act would not otherwise apply as a law of the State, or be applied as a law of the Commonwealth, to or in relation to any person, circumstance, thing or place.

[Section 6 amended: No. 20 of 2002 s. 177; No. 43 of 2024 s. 109.]

6A. Application to police officers

This Act applies to a police officer as if —

(a) the police officer were an employee; and

(b) the Commissioner of Police were the employer of the police officer.

[Section 6A inserted: No. 43 of 2024 s. 110.]

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 taken to be a term of an industrial instrument under section 5(2) — as a provision of the instrument.

[Section 7 amended: No. 30 of 2021 s. 102; No. 43 of 2024 s. 111.]

8. Cashing out accrued paid 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 paid annual leave to which the employee became entitled in relation to that year of service if —

(a) the amount of paid annual leave forgone does not exceed 50% of the whole amount of paid 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 paid annual leave forgone; and

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

(2) A benefit is not equivalent to forgone paid annual leave unless the employee is paid at least the amount the employee would have been paid had the employee taken the forgone leave.

(2A) The employer and employee may make a subsequent agreement in relation to the same year of service.

(2B) Subsection (1) applies to a subsequent agreement as if a reference to the amount of paid annual leave in subsection (1)(a) were a reference to the total amount of paid annual leave forgone under all agreements made in relation to that year of service.

(2C) An agreement referred to in subsection (1) or (2A) is of no effect if —

(a) the employer's offer of employment was made on the condition that the employee would be required to enter into the agreement; or

(b) it does not comply with subsection (1) or (2B).

(3) The employer must not —

(a) require the employee to forgo taking an amount of paid 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 paid 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; No. 43 of 2024 s. 112.]

*[**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) 25%; or

(b) if a percentage higher than 25% 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); No. 43 of 2024 s. 113.]

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 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); No. 43 of 2024 s. 114.]

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; and

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

supported employment service means a service to support the paid employment of persons with disability, being persons —

(a) for whom competitive employment at or above the wage payable under the relevant award is unlikely; and

(b) who, because of their disability, need substantial ongoing support to obtain or retain paid employment;

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; amended: No. 43 of 2024 s. 115.]

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 industrial instrument 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; amended: No. 43 of 2024 s. 116.]

17C. Methods for paying employee

(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 an industrial instrument 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; No. 43 of 2024 s. 117.]

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 an industrial instrument 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 deducted under subsection (1) paid by the employer in accordance with the employee's instructions or in accordance with the requirements of the industrial instrument, 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; No. 43 of 2024 s. 118.]

17E. Certain terms of no effect

(1) A term of an industrial instrument 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 industrial instrument 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 industrial instrument 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; amended: No. 43 of 2024 s. 119.]

Part 4 — Minimum leave conditions

Note for this Part:

This Part does not provide for entitlements to parental leave. The *Fair Work Act 2009* (Commonwealth) Part 6-3 Division 2 extends unpaid parental leave and related entitlements to non-national system employees.

[Note inserted: No. 43 of 2024 s. 120.]

Division 1 — Preliminary

18. Rate of pay and average weekly hours for paid leave

(1) An employee must be paid for paid leave at the rate the employee would have received as payment under an industrial instrument or contract of employment (whichever provides for the higher rate) at the time the employee takes the leave.

(2) If the number of hours an employee is entitled to be paid for a period of paid leave cannot be determined, the hours are to be worked out by averaging, as hours worked each week, the total number of hours the employee worked during the shorter of the following periods —

(a) the 365 days immediately before the leave is taken;

(b) the period of employment immediately before the leave is taken.

(3) The following periods are not to be counted as part of a period referred to in subsection (2)(a) or (b) —

(a) a period of unpaid leave;

(b) a period during which the employee is stood down in accordance with an industrial instrument, contract of employment or written law;

(c) a period during which the employee is or was a compensated employee.

(4) Payments for overtime, penalty rates or any kind of allowance are not required to be included in a rate of pay under subsection (1).

(5) Despite subsection (4), casual loading payable under an industrial instrument or contract of employment may be included in the rate of pay for bereavement leave under section 27 or 27A.

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

(7) This section is subject to sections 18A and 18B.

[Section 18 inserted: No. 43 of 2024 s. 121.]

18A. Rate of pay for paid leave for employee paid wholly by commission or percentage reward or at piece rates

(1) An employee paid wholly by commission or percentage reward or at piece rates must be paid for paid leave at the highest of the following rates —

(a) the rate payable under an industrial instrument or contract of employment (whichever provides for the higher rate);

(b) the rate calculated according to the employee's average weekly earnings during the 365 days immediately before the leave is taken, not counting any period referred to in section 18(3)(a) to (c);

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

(2) Payments for overtime, penalty rates or any kind of allowance are not required to be included in a rate of pay under subsection (1).

(3) Despite subsection (2), casual loading payable under an industrial instrument or contract of employment may be

included in the rate of pay for bereavement leave under section 27 or 27A.

[Section 18A inserted: No. 43 of 2024 s. 121.]

18B. Rate of pay for paid leave for employee entitled to receive income compensation

(1) For the purposes of this Part —

(a) an employee is ***entitled to receive income compensation*** if the employee is entitled to be paid income compensation under the *Workers Compensation and Injury Management Act 2023* Part 2 Division 3; and

(b) an employee who is entitled to receive income compensation is a ***compensated employee***, whether or not the employee also performs work for the employee's employer while entitled to receive income compensation.

(2) A compensated employee must be paid for paid leave at the higher of the following rates (the ***compensated employee rate*** for the leave) —

(a) the compensated employee's rate of pay at the time the leave is taken;

(b) the compensated employee's rate of pay immediately before the employee became entitled to receive income compensation.

(3) For the purposes of subsection (2), the employee's ***rate of pay*** is the rate that the employee would have been entitled to receive as payment under an industrial instrument or contract of employment (whichever provides for the higher rate), had the employee not become entitled to receive income compensation.

(4) A compensated employee's ***average weekly hours*** are the average hours the employee worked each week during the shorter of the following periods —

(a) the 365 days immediately before the employee became entitled to receive income compensation;

(b) the period of employment immediately before the employee became entitled to receive income compensation.

(5) A period referred to in section 18(3) is not to be counted as part of a period referred to in subsection (4)(a) or (b).

[Section 18B inserted: No. 43 of 2024 s. 121.]

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

(2) An employee's entitlement to paid personal leave —

(a) accrues pro rata on a weekly basis; and

(b) is cumulative.

(3) For the purposes of subsection (1), the hours an employee is ordinarily required to work in relation to a particular year of service must not include a period during which the employee is or was a compensated employee.

Note for this subsection:

See the *Workers Compensation and Injury Management Act 2023* section 61(2)(d) in relation to a worker accruing entitlements to sick leave for any period for which the worker is entitled to receive income compensation.

(4) If the hours a compensated employee would ordinarily work in a 2-week period in a particular year of service cannot be determined, the employee's hours for each week in that period are the average weekly hours under section 18B(4).

[Section 20 inserted: No. 43 of 2024 s. 122.]

20A. Taking paid personal leave

(1) An employee may take paid personal leave if the employee is unable to work as a result of personal circumstances.

Note for this subsection:

See the *Workers Compensation and Injury Management Act 2023* section 61(2)(c) for a limit to a worker's entitlement to take personal leave while receiving income compensation.

(2) However, 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;

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

(3) If, while on paid personal leave, an employee takes paid family and domestic violence leave, the employee is taken not to be on paid personal leave for the period of the paid family and domestic violence leave.

(4) This section is subject to the *Workers Compensation and Injury Management Act 2023* section 61.

[Section 20A inserted: No. 43 of 2024 s. 122.]

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 under section 20A.

[Section 21 inserted: No. 30 of 2021 s. 116; amended: No. 43 of 2024 s. 123.]

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 — Paid annual leave

[Heading inserted: No. 43 of 2024 s. 124.]

23. Entitlement to paid annual leave

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

(2) An employee's entitlement to paid annual leave —

(a) accrues pro rata on a weekly basis; and

(b) is cumulative.

(3) For the purposes of subsection (1), the hours an employee is ordinarily required to work in relation to a particular year of service must not include a period during which the employee is or was a compensated employee.

Note for this subsection:

See the *Workers Compensation and Injury Management Act 2023* section 61(2)(d) for an employee's entitlements in relation to accruing annual leave while entitled to receive income compensation.

(4) If the hours a compensated employee would ordinarily work in a 4-week period in a particular year of service cannot be determined, the employee's hours for each week in that period are the average weekly hours under section 18B(4).

[Section 23 inserted: No. 43 of 2024 s. 124.]

24. Taking paid annual leave

(1) If an employer and an employee have not agreed when the employee is to take paid annual leave, the employer must not refuse the employee taking, at a time suitable to the employee, a period of paid annual leave the employee became entitled to 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 paid annual leave.

(3) If, while on paid annual leave, an employee takes paid family and domestic violence leave, the employee is taken not to be on paid annual leave for the period of the paid family and domestic violence leave.

Note for this section:

See the *Workers Compensation and Injury Management Act 2023* section 61(2)(a) for an employee's entitlement to take annual leave while entitled to receive income compensation.

[Section 24 inserted: No. 43 of 2024 s. 124.]

25. When employee must be paid for paid annual leave

(1) An employee must be paid for paid annual leave at the time payment is made in the normal course of the employment.

(2) However, if an employee taking paid annual leave requests in writing, the employee must be paid for the leave before it starts.

[Section 25 inserted: No. 43 of 2024 s. 124.]

26. Paying out paid annual leave when employment ends

(1) An employee is entitled to be paid out for all untaken paid annual leave when the employee's employment ends.

(2) However, an employee is not entitled to be paid out for untaken paid annual leave that relates to a partly completed year of service if the employee's employment is ended —

(a) unlawfully by the employee; or

(b) by the employer because of the fault of the employee.

(3) Despite subsection (2), if an employee's employment is ended by the employer because of the employee's misconduct, the employee is not entitled to be paid out for untaken paid annual leave that relates to a year of service completed after the misconduct.

(4) An employee must be paid out for untaken paid annual leave at a rate as follows —

(a) if the employee is a compensated employee when the employment is ended — the compensated employee rate;

(b) in any other case — the rate the employee would have received as payment for that leave under an industrial instrument or contract of employment (whichever provides for the higher rate) at the time the leave is paid out.

[Section 26 inserted: No. 43 of 2024 s. 124.]

Division 4 — Paid bereavement leave

[Heading inserted: No. 43 of 2024 s. 125.]

27. Entitlement to paid bereavement leave

(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) Paid 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; No. 43 of 2024 s. 126.]

27A. Paid bereavement leave for compensated employee

(1) This section applies to a compensated employee who has a partial incapacity for work and is performing paid work for the employee's employer.

Note for this subsection:

See the *Workers Compensation and Injury Management Act 2023* section 48 in relation to an employee who has a partial incapacity for work.

(2) On the death of a member of the employee's family or household, the employee is entitled to take paid bereavement leave in accordance with section 27.

(3) The employee must be paid for that leave at the compensated employee rate.

[Section 27A inserted: No. 43 of 2024 s. 127.]

28. Proof of entitlement may be required

An employee who claims to be entitled to paid bereavement leave under this Division 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.

[Section 28 amended: No. 43 of 2024 s. 128.]

Division 5 — Public holidays

29. Application of Division

This Division is subject to the *Workers Compensation and Injury Management Act 2023* section 60.

[Section 29 inserted: No. 43 of 2024 s. 129.]

30. Employee entitled to be absent from work on public holiday

(1) An employee is entitled to be absent from work on a day or part of a day that is a public holiday.

(2) However, an employer may request that an employee work on a day or part of a day that is a public holiday if the request is reasonable.

(3) If an employer makes a request, the employee may refuse the request if —

(a) the request is not reasonable; or

(b) the refusal is reasonable.

(4) In determining whether a request or refusal is reasonable, the following must be taken into account —

(a) the nature and conduct of the employer's business or operations;

(b) the nature of the employee's work;

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

(d) whether the employee could reasonably expect that the employer might request work on the public holiday;

(e) whether the employee is entitled to receive overtime payments, penalty rates or other compensation (including compensation in the form of an annualised salary) for, or a level of remuneration that reflects an expectation of, work on the public holiday;

(f) the type of employment of the employee (for example, whether full-time, part-time, casual or shift work);

(g) the amount of notice in advance of the public holiday given —

(i) by the employer when making the request; or

(ii) by the employee when refusing the request.

(5) Subsection (4) does not limit the matters that may be taken into account in determining whether a request or refusal is reasonable.

[Section 30 inserted: No. 43 of 2024 s. 129.]

31. Employee entitled to be paid for public holiday

(1) This section applies to an employee who is absent from work on a day or part of a day that is a public holiday in accordance with section 30, other than —

(a) a casual employee; or

(b) an employee who would not ordinarily work on the public holiday; or

(c) an employee who is on unpaid leave on the public holiday.

(2) The employee is entitled to be paid —

(a) as if the employee were required to work their ordinary hours on the public holiday; and

(b) at the rate the employee would have received as payment for those hours under an industrial instrument or contract of employment, whichever provides for the higher rate.

(3) No penalty rate or allowance is required to be taken into account in determining any rate of pay for the purposes of subsection (2)(b).

(4) This section and section 30 do not require an employer to pay a penalty rate for work done by an employee on a public holiday.

[Section 31 inserted: No. 43 of 2024 s. 129.]

32. Substituted public holiday

(1) An industrial instrument may provide for an employer and employee to agree to substitute —

(a) another day for a day that is a public holiday; or

(b) part of another day for part of a day that is a public holiday.

(2) An employer and an employee whose employment is not governed by an industrial instrument may agree to substitute —

(a) another day for a day that is a public holiday; or

(b) part of another day for part of a day that is a public holiday.

(3) An agreement under subsection (2) must be —

(a) in writing; and

(b) signed by the employer and the employee.

(4) If another day or part of another day is substituted for a public holiday —

(a) the substituted day or part of the day is taken to be the public holiday; and

(b) the employee has the same entitlements and obligations under this Division in relation to the substituted day or part of the day as to the public holiday.

[Section 32 inserted: No. 43 of 2024 s. 129.]

33. Employee taken not to be on paid annual leave or paid personal leave on public holiday

(1) This section applies if the period during which an employee takes paid annual leave or paid personal leave includes a public

holiday that falls on a day the employee would ordinarily have worked.

(2) The employee —

(a) is taken not to be on paid annual leave or paid personal leave on that public holiday; and

(b) is entitled to be absent from work on that public holiday; and

(c) is entitled to be paid for that public holiday in accordance with section 31.

[Section 33 inserted: No. 43 of 2024 s. 129.]

[Division 6 (s. 34-39) deleted: No. 43 of 2024 s. 130.]

Division 7 — Unpaid family and domestic violence leave

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

Note for this Division:

The *Fair Work Act 2009* (Commonwealth) Part 6-3 Division 2A extends entitlements to paid family and domestic violence leave to non-national system employees

[Note inserted: No. 43 of 2024 s. 131.]

39A. Term used: unpaid family and domestic violence leave

In this Division —

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

[Section 39A inserted: No. 43 of 2024 s. 132.]

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 4A — Flexible working arrangement requests

[Heading inserted: No. 43 of 2024 s. 133.]

39F. Employee may request flexible working arrangement

(1) If an employee would like to change their working arrangements because any of the circumstances referred to in subsection (2) apply to the employee, the employee may make a request to the employer for a change in working arrangements relating to those circumstances (a ***flexible working arrangement request***).

(2) The circumstances are as follows —

(a) the employee is pregnant;

(b) the employee is the parent of, or has responsibility for the care of, a child;

(c) the employee is a carer as defined in the *Carers Recognition Act 2004* section 5;

(d) the employee has a disability;

(e) the employee is 55 years of age or older;

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

(g) the employee provides care or support to a member of the employee's family or household who requires care or support because the member is experiencing family and domestic violence.

(3) In subsection (2) —

child means a child who is of compulsory school age in accordance with the *School Education Act 1999* or who is younger than that age.

(4) A flexible working arrangement request may include changes to —

(a) the employee's hours of work, including working on fewer days or for fewer hours, or both; or

(b) the employee's pattern of work, including working on different days or at different times, or both; or

(c) the location of the employee's work.

(5) The employee is not entitled to make the request unless —

(a) for an employee other than a casual employee — immediately before making the request, the employee has completed at least 12 months of continuous service with the employer; or

(b) for a casual employee, the employee —

(i) immediately before making the request, has been employed by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and

(ii) has a reasonable expectation of continuing employment with the employer on a regular and systematic basis.

[Section 39F inserted: No. 43 of 2024 s. 133.]

39G. Formal requirements

A flexible working arrangement request must be in writing and set out the following details —

(a) the flexible working arrangement sought;

(b) the reasons for seeking that arrangement;

(c) which of the circumstances in section 39F(2) apply to the employee.

[Section 39G inserted: No. 43 of 2024 s. 133.]

39H. Responding to flexible working arrangement request

(1) If an employee makes a flexible working arrangement request, the employer must give the employee a written response to the request within 21 days.

(2) The response must —

(a) state that the employer grants the request; or

(b) if, following discussions, the employer and the employee agree to alternative changes to the employee's working arrangements from those set out in the request — set out the agreed changes; or

(c) subject to subsection (3) — state that the employer refuses the request and include the matters required by section 39J.

(3) The employer may refuse the request only if —

(a) the employer has —

(i) discussed the request with the employee; and

(ii) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances referred to in section 39F(2);

and

(b) the employer and the employee have not reached an agreement; and

(c) the employer has considered the consequences of the refusal for the employee; and

(d) there are reasonable business grounds for refusing the request.

(4) To avoid doubt, subsection (3)(a)(ii) does not require the employer to agree to a flexible working arrangement if the employer would have reasonable business grounds for refusing the request.

(5) Despite subsection (3), the employer may refuse a request if agreeing to the request would contravene a provision of an industrial instrument which extends to and binds the employer and employee.

[Section 39H inserted: No. 43 of 2024 s. 133.]

39I. Reasonable business grounds for refusing request

For the purpose of section 39H(3)(d), reasonable business grounds for refusing a flexible working arrangement request include the following —

(a) the requested arrangement would be too costly for the employer;

(b) there is no capacity to change the working arrangements of other employees to accommodate the requested arrangement;

(c) it would be impracticable to change the working arrangements of other employees, or recruit new employees, to accommodate the requested arrangement;

(d) the requested arrangement would be likely to result in a significant loss to the employer's efficiency or productivity;

(e) the requested arrangement would be likely to have a significant negative impact on customer service.

[Section 39I inserted: No. 43 of 2024 s. 133.]

39J. Employer must explain grounds for refusal

If the employer refuses the request, the employer's written response under section 39H(1) must —

(a) include details of the reasons for the refusal; and

(b) set out the employer's particular business grounds for refusing the request and explain how those grounds apply to the request; and

(c) either —

(i) set out the changes in the employee's working arrangements (other than the requested changes) that the employer would be willing to make to

accommodate, to any extent, the employee's circumstances referred to in section 39F(2); or

(ii) state that there are no such changes;

and

(d) advise the employee of the process in section 39K and the IR Act Part II Division 3A Subdivision 2 in relation to a flexible working arrangement dispute.

[Section 39J inserted: No. 43 of 2024 s. 133.]

39K. Employer and employee must attempt to resolve dispute by discussions at workplace level

(1) Before making a referral under the IR Act section 29 in relation to a flexible working arrangement dispute, the employer and employee must make reasonable attempts to resolve the dispute by discussions at the workplace level.

Note for this section:

The IR Act section 29(1) provides for the referral of an industrial matter relating to a flexible working arrangement dispute to the Commission.

(2) A party to a dispute may authorise a person or organisation to support or represent the party in the discussions.

[Section 39K inserted: No. 43 of 2024 s. 133.]

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)
Industrial Relations Legislation Amendment Act 2024 Pt. 3	43 of 2024	13 Nov 2024	31 Jan 2025 (see s. 2(c))

~~Other notes~~

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
Public and Bank Holidays Amendment Act 2026 Pt. 3	19 of 2026	28 Oct 2026	1 Jan 2028 (see s. 2(b))

[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.

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