



Western Australia State Industrial Laws

This information is a summary only and serves to provide an introduction to state industrial laws in Western Australia. Where further information is required you will find links to government or department sites. You should always consult your local governing body or industry advisor if you are unsure or need further clarification.

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An introduction to western Australian state industrial laws



There are two separate industrial relations systems operating in the state of Western Australia, each with different employment laws, awards and minimum conditions.

If you run your business as a company or with a trust with a company as trustee and you employ staff then you are part of the federal Industrial relations system, or a [national system employer](#).

If you are a national system employer, minimum wages and employment conditions are provided for by the modern awards and the NES (see **AWARDS SECTION** on the People in Agriculture website for more information www.peopleinag.com.au).

If you run your business as a sole trader, a partnership, or with a trust with an individual as trustee then you are a non –national system employer and the WA state industrial laws apply to you.

If you are a non –national system employer then minimum wages, and employment conditions are provided for in the Minimum Conditions of Employment Act 1993 (see below for more information about the Act) and the relevant state award. A list of awards applicable in WA can be found on the Department of Commerce site at <https://www.commerce.wa.gov.au/labour-relations/wa-award-summaries>. These summaries provide information about hours of work and other award entitlements.

The WA Farm Employees Award 1985 applies to the sowing, raising and harvesting and/or treatment of grain fodder or other farm produce, and the breeding, rearing or grazing of horses, cattle, sheep pigs or deer. This award does not cover the dairy industry in WA which is therefore ‘award free’.

The Fruit Growing and Packing Industry WA Award applies to all workers employed in the classifications contained in the award in the fruit growing and packing industry including the preparation of land , cultivation, planting, care, handing, treating, packing and dispatching all fresh fruits including tomatoes. The growing and packing of vegetables other than tomatoes is award free.

The Shearing Contractors Award of Western Australia 2003 covers shearing operations in WA by employers who operate as shearing contractors.

For more information regarding which industrial relation system applies to your business, see the links below. You should also seek legal advice or advice from your state farming organisation before applying terms and conditions of an award or agreement.

Small business development corporation <https://www.smallbusiness.wa.gov.au/business-topics/employing-people/state-industrial-relations/>

Department of commerce government of Western Australia
<https://www.commerce.wa.gov.au/labour-relations/who-wa-industrial-relations-system>

State laws and minimum wages / entitlements

Minimum Conditions of Employment Act 1993

The [WA Minimum Conditions of Employment Act 1993](#) provides minimum entitlements for employees of all non-national system employers. Terms of employment in an award, a workplace agreement or a common law contract of employment which are less favourable than the minimum conditions have no effect and the minimum standard applies in their place.

For a current copy of Minimum Conditions of Employment Act 1993, see https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_603_homepage.html

Minimum wages

The Minimum Conditions of Employment Act lays down a minimum adult weekly rate of pay for a 38 hour week as well as junior rates for employees aged under 21 years and rates for trainees and apprentices which apply unless award rates are higher. As the wage rates change regularly, you should confirm the current minimum wage rates by visiting the

Department of Commerce at <http://www.commerce.wa.gov.au/labour-relations/minimum-pay-rates-award-free-employees-0>

The Minimum Conditions of Employment Act also specifies a casual loading of 20% which applies unless the award casual loading is higher. The casual loading compensates casual employees for loss of annual leave, sick leave, paid carer's leave and pay for public holidays. No employee, whether covered by an award or agreement can be required or requested to work more than 38 hours in a week plus reasonable additional hours. Whether additional hours are reasonable is determined by giving consideration to a range of relevant factors including the following:

- any risk to occupational health and safety from working the additional hours;
- the employee's personal circumstances including family responsibilities;
- the business requirements;
- any notice of the need for the additional hours;
- any notice given by the employee of their intention to refuse additional hours;
- whether the additional hours are on a public holiday;
- the employee's hours of work over the last four weeks

The act does not specify any overtime payments for reasonable additional hours which are payable at the same hourly rate as the minimum wage.

Awards may specify payment for overtime. See the [Department of Commerce WA award summaries](https://www.commerce.wa.gov.au/labour-relations/2016-wa-award-summaries-and-minimum-pay-rates) for more information. <https://www.commerce.wa.gov.au/labour-relations/2016-wa-award-summaries-and-minimum-pay-rates>

Public holidays

The Minimum Conditions of Employment Act provides for all employees, other than casual employees, to be paid their normal pay for any day they are not required to work due to a public holiday, provided they would normally have worked on that day. There is no provision for penalty rates if the employee is required to work on the public holiday. The act does not allow for substitution of week days for public holidays which fall on weekends.

Awards may specify payment for work performed on public holidays. See the [Department of Commerce WA award summaries](https://www.commerce.wa.gov.au/labour-relations/wa-award-summaries) for more information. <https://www.commerce.wa.gov.au/labour-relations/wa-award-summaries>

Employing children - national system employers and non-national system employers

Employment of Children in Western Australia is governed by the Children and Community Services Act 2004 and the School Education Act 1999. It is an offence to employ children under 15 years of age on a farm in Western Australia. This does not apply to family businesses carried on by parents or relatives of the child. Children over 15 years of age can work outside of school hours. It is an offence to employ a child of school age (up to 17 years) during school hours.

Workplace agreements

In Western Australia there is no ability to make a workplace agreement which applies to all employees or a group of employees unless one of the parties is a trade union. Employers who have employees who are union members and who wish to make a workplace agreement should consult with the relevant trade union. The WA Industrial Relations Act does provide for individual workplace agreements between an employer and an employee. These agreements are called Employer-Employee Agreements. For further information about how to draft and put in place an Employer-Employee Agreement go to the [Industrial Relations Commission website](http://www.wairc.wa.gov.au/Pages/EEAs/EEAs.aspx) <http://www.wairc.wa.gov.au/Pages/EEAs/EEAs.aspx>.

WA State laws and leave entitlements

Annual leave

The Minimum Conditions of Employment Act provides for annual leave of 152 hours for each completed year of service for all full time employees (other than casual employees) and pro rata leave at the same rate for part time employees. A summary of annual leave entitlements is outlined below. For more information see the [Minimum Conditions of Employment Act](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/minimum_conditions_of_employment_booklet.pdf).

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/minimum_conditions_of_employment_booklet.pdf

- Annual leave does not accrue on unpaid leave taken through the year e.g. parental leave.
- Casual employees are not entitled to annual leave as the casual loading compensates them for the loss of this entitlement.
- The entitlement to annual leave accrues on a weekly basis and accumulates from year to year if not taken.


- Annual leave may be taken in advance of it falling due if the employer agrees but there is no obligation to do so.
- Annual leave is paid at the rate which applies when the leave is taken excluding any payments usually made for overtime, penalty rates and allowances.
- Accrued annual leave must be paid out when employment is terminated.
- Annual leave can be taken at any time agreed on by the employer and the employee. However, employers cannot refuse to allow employees to take annual leave which has accrued for more than 12 months at a time suitable to the employee provided at least two weeks' notice is given.
- Cashing out of annual leave is permitted in certain circumstances. Employees must have been employed by the employer for at least one year and can only cash out up to 50% of the leave which has accrued in that year. Employers cannot require employees to cash out annual leave or apply pressure on them to do so and the agreement must be recorded in writing.
- Annual leave loading is an award condition which is not a part of the WA Minimum Conditions of Employment laws. The WA Farm Employees Award 1985 and the The Fruit Growing and Packing Industry WA Award provide for an annual leave loading of 17.5% to be paid to all award employees.

Sick leave

Sick leave is paid leave for any illness or injury except those sustained at work. The Minimum Conditions of Employment Act provides for 76 hours (or 10 days) per year sick leave for all full-time employees. Part-time employees accrue sick leave on a pro rata basis according to the hours they work up to a maximum of 76 hours. A summary of sick leave entitlements is outlined below. For more information see the [Minimum Conditions of Employment Act](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/minimum_conditions_of_employment_booklet.pdf). https://www.commerce.wa.gov.au/sites/default/files/atoms/files/minimum_conditions_of_employment_booklet.pdf

- Casual employees are not entitled to sick leave as the casual loading compensates them for the loss of this entitlement.
- Sick leave accrues on a weekly basis and accumulates from year to year if not taken and can be taken as a part of a day.
- Sick leave does not accrue on periods of unpaid leave such as parental leave.
- Employees who take sick leave must provide reasonable evidence of the need for the leave.

Carer's leave



The Minimum Conditions of Employment Act allows employees who have been employed for a year, to use a maximum of 10 days per year of their accrued sick leave as paid carer's leave for the purpose of providing care and support to a member of the employee's family or household who requires care or support due to an illness, injury or unexpected emergency. Leave for part days can be taken.

'Member of the employee's family or household' is defined as follows:

- the employee's spouse or de facto partner;
- a child, step-child or grandchild of the employee;
- a parent, step-parent or grandparent of the employee;
- a sibling of the employee;
- a member of the employee's household.

Unused carer's leave does not accrue from year to year.

Unpaid carer's leave

Unpaid carer's leave of up to two days per occasion is also permitted if an employee does not have an entitlement to paid carer's leave. This also applies to casual employees.

Employees who take paid and unpaid carer's leave must provide reasonable evidence of the need for the leave.

Bereavement leave

The Minimum Conditions of Employment Act provides for all employees, including casual employees, to take up to two days paid bereavement leave on the death of a family member or a member of the employee's household. The two days do not have to be consecutive.

If requested to do so by the employer, employees taking bereavement leave must provide reasonable evidence that the death is the reason for the leave and the relationship of the person to the employee.

Parental leave

The [National Employment Standards](#) about parental leave apply to all employers in Australia including non-national system employers in Western Australia. See the People in Agriculture web site Leave and Public Holidays section for more information. www.peopleinag.com.au

Long service leave – (national system employers and non-national system employers)

Long service leave is paid leave granted to employees to recognise a long period of service to the employer. Long service leave entitlements transfer with a business when it is sold or

taken over if the employees continue in employment with the new owner.

The Western Australian long service leave laws apply to all award and non-award employers in Western Australia. For more information about long service leave in Western Australia, see the Department of Commerce website at <https://www.commerce.wa.gov.au/labour-relations/long-service-leave-0>

State laws and record keeping

The Western Australian industrial laws require all employers to keep records for each employee and there are penalties under the act for breaches of these requirements. Records must be in English with separate records for each employee. Below is a summary of the laws pertaining to record keeping in Western Australia. For more information see the Department of Commerce web site at <https://www.commerce.wa.gov.au/labour-relations/record-keeping-requirements>

- Records for long service leave must be kept for the duration of the employee's employment and for seven years after termination of the employment. Other records must be kept for seven years after the last entry.
- Any alterations to records must be made as soon as the error is recognised and a notation of the change made in the record.
- Records must be in a form which can be made available for inspection and copying by the employee or their representative or an industrial inspector. Penalties can be imposed for breaches.
- The minimum conditions of employment legislation lays down details of records which must be kept if the employee's employment is not subject to an award or an Employer-Employee Agreement. They are as follows:
 - the employee's name and (if under 21) date of birth;
 - the gross and net amounts paid to the employee under the contract of employment and all deductions and the reason for them;
 - all paid, partly paid, and unpaid leave taken by the employee;
 - the employee's commencement date;
 - details necessary to calculate the employee's entitlement to (and payment for) long service leave; and
 - the total number of hours worked in each week if the employee's salary is \$45,000 per annum or less.

Pay slips

There are no statutory requirements in Western Australia for pay slips. However, best practice requires that employees be given a pay slip which contains all the information they need to be sure they are being paid the correct amount. See the WA payslip template at the People in Agriculture website www.peopleinag.com.au



Termination of employment and unfair dismissal

Employers should use fair procedures when terminating employees as replacing employees is expensive and claims for unfair or unlawful dismissal can be costly and time consuming to defend. Read more about termination on the People in Agriculture site www.peopleinag.com.au.

The [National Employment Standard](#) about notice of termination applies to all employers in Australia including non-national system employers in Western Australia.

Summary dismissal

Summary or instant dismissal is dismissal of an employee 'on the spot' and without notice. Employers should only dismiss without notice if the employee is guilty of deliberate and serious misconduct which is so bad that it would be unreasonable to expect the employer to continue employing the employee for the notice period.

Summary dismissal should be reserved for the most serious cases of misconduct and employers who summarily dismiss an employee should always keep accurate records noting what occurred leading up to the dismissal so that they can defend an unfair dismissal action if necessary.

Serious misconduct could include theft, fraud, assault, wilful disobedience of a lawful order or deliberate behaviour which is a serious risk to the health and safety of a person or the reputation, viability or profitability of the employer's business.

Notice or pay in lieu of notice is not required in cases of serious employee misconduct. See the Termination section on the People in Agriculture web site for more information www.peopleinag.com.au.

Job search entitlement

Employees who have been given notice of termination are entitled to one day's time off work per week to seek alternative employment. If the employee takes more than one day

off during the notice period the employer may request a statutory declaration confirming proof of attendance at an interview prior to making payment to the employee for that day.

Unfair dismissal

All non-national system employers in Western Australia are subject to the state laws regarding unfair dismissal.

Unfair dismissal claims are usually based on the allegation that the process used by the employer to terminate the employee was harsh, oppressive or unfair. Employees claiming unfair dismissal will have to prove one or more of these elements to succeed in their claim. In Western Australia, unfair dismissal claims are brought in the WA Industrial Relations Commission. Visit the website for more information

<http://www.wairc.wa.gov.au/index.php/en/>

Redundancy

A job becomes redundant when an employer decides that the job the employee has been doing is no longer needed or that fewer employees are needed at the workplace.

Redundancies usually occur in farming when the farmer is retiring, cutting staff to save costs or introducing new machinery or technology.

Redundancy laws for farmers in Western Australia are contained in the Redundancy General Order. <http://det.wa.edu.au/policies/detcms/policy-planning-and-accountability/policies-framework/web-references/western-australian-industrial-relations-commission--termination-change-and-redundancy-order.en> for more information.

Severance pay - The Redundancy General Order lays down the following amounts of severance pay for all workplaces that employ 15 or more employees (this includes all casual and part-time employees).

Period of continuous service	Number of weeks' pay
Less than 1 year	nil
1 year and less than 2 years	4
2 years and less than 3 years	6
3 years and less than 4 years	7
4 years and less than 5 years	8
5 years and less than 6 years	10
6 years and less than 7 years	11
7 years and less than 8 years	13
8 years and less than 9 years	14



Period of continuous service	Number of weeks' pay
9 years and less than 10 years	16
10 years and over	12

- Week's pay excludes overtime, penalty rates, bonuses and allowances.
- Severance payments cannot be more than the employee would have earned if they had reached their normal retirement date.

Exclusions from severance pay requirement

The following types of employees are not entitled to severance payments:

- employees dismissed for serious misconduct;
- employees with less than one year's service;
- probationary employees;
- casual employees
- apprentices and trainees;
- employees engaged for a specific period of time or for a specified task; and

Consultation

Employers intending to implement redundancies are required to notify employees in advance and consult with them about possible measures to reduce the impact of the redundancy upon them.