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## Federal and state employment systems

### How do I know if I'm a federal or state employer?

Two jurisdictions for industrial relations operate within Western Australia. The *Fair Work Act 2009 (Cth)* governs employers and employees in the federal system - called the National Employment Standards (NES) - while the *Industrial Relations Act 1979 (WA)* covers those in the state system.

You are a **national system** employer if your business is incorporated, therefore the name of the company will be either "X Pty Ltd" or "X Ltd". The national system also applies to Trusts with a company as Trustee.

In WA, the **state system** applies to sole traders, partnerships, other unincorporated entities and non-trading corporations.

The websites applicable to each jurisdiction are:

- National:
  - The Fair Work Act 2009: <https://www.fairwork.gov.au/about-us/legislation>.
  - The National Employment Standards: <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>
- State:
  - Minimum conditions of employment:  
[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrcmp\\_2008.pdf/\\$FILE/Minimum%20Conditions%20Of%20Employment%20Act%201993%20Compare%205B04-g0-01%5D%20-%205B04-h0-01%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrcmp_2008.pdf/$FILE/Minimum%20Conditions%20Of%20Employment%20Act%201993%20Compare%205B04-g0-01%5D%20-%205B04-h0-01%5D.pdf?OpenElement)

### Are my employees covered by an Award?

Awards apply to employees depending on the industry they work in or the job that they do.

Under the federal awards, there are 122 industry and occupation awards that cover most people working in Australia. To find an award: <https://www.fairwork.gov.au/awards-and-agreements/awards> or <https://www.fwc.gov.au/awards-and-agreements/awards/modern-awards/modern-awards-list>

For the state based awards, summaries can be found: <https://www.commerce.wa.gov.au/labour-relations/wa-award-summaries>

For award-free employees in the state system, minimum pay rates can be found here: <https://www.commerce.wa.gov.au/labour-relations/minimum-pay-rates-award-free-employees-0>

## **I'm a farmer, are my employees covered by an Award?**

### ***National system***

The **Pastoral Award 2020** applies to employers and employees throughout Australia in the pastoral industry. The Award defines the pastoral industry as:

- a. the management, breeding, rearing or grazing of livestock or poultry;
- b. the shearing and crutching of sheep and the classing and pressing of wool on farms;
- c. dairying;
- d. hatchery work;
- e. the sowing, raising or harvesting of broadacre field crops and other crops grown as part of a broadacre mixed farming enterprise;
- f. the treatment of land for any of these purposes; or
- g. clearing, fencing, well sinking, dam sinking or trenching on such farms or properties.

The **Horticulture Award 2020** applies to employers and employees in the horticulture industry. The Award defines the horticulture industry as:

- a. agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or
- b. clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.

### ***State system***

The **Farm Employees Award** applies to a General Farm Hand or Farm Tradesperson in connection with:

- a. the sowing, raising, harvesting and/or treatment of grain, fodder or other farm produce
- b. the breeding, rearing or grazing of horses, cattle, sheep, pigs or deer
- c. clearing, fencing, well sinking, dam sinking or trenching on farms or properties

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## Employment arrangements

### What's the difference between full-time, part-time and casual?

A full-time employee usually works, on average, 38 hours per week. They are permanent employees or alternatively they can be on a fixed-term contract. Full-time employees are entitled to the full suite of paid leave

Part-time employees work, on average, less than 38 hours a week usually on regular hours each week. They are also permanent employees and can also be employed on a fixed-term contract. Part-time employees are entitled to leave on a pro-rata basis according to their ordinary hours.

Casual employees do not have a firm commitment from their employer about how long they will be employed for or the days/hours they will work. This also means casual employees do not have to agree to shifts/work offered to them. Casual employees are not entitled to paid leave (except for long service leave). They are also not entitled to notice of termination or redundancy pay. Because of they are paid a casual loading. This is usually 20% in the state system, 25% in the national system – always check the Award for this.

### My employee wants to be paid as a contractor. Is this ok?

It depends. The table below<sup>1</sup> may help determine if your employee should be classified as an employee or a contractor.

Indicator	Employee	Contractor
Degree of control over how work is performed	Have their work directed or controlled by their employer	Have a high level of control over how the work is done
Hours of work	Work set or standard hours	Agree to the hours required to complete the job
Expectation of work	Usually have an ongoing expectation of work	Usually engaged for a specific task or time
Risk	Bear no financial risk – covered by employer's insurance	Bear the risk of making a profit or a loss and usually bears responsibility and liability for poor work or injury – usually have their own insurance
Tools and equipment	Are provided by the employer with tools or a tool allowance is provided	Use their own tools and equipment
Tax	Have income tax deducted by their employer	Pay their own tax and GST to the ATO
Method of payment	Are paid wages or a salary regularly	Have an ABN and submits invoices (with or without GST)

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<sup>1</sup> <https://www.fairwork.gov.au/find-help-for/independent-contractors>

Indicator	Employee	Contractor
Leave	Are entitled to paid leave	Don't receive paid leave

You can also try the ATO's Employee/Contractor decision tool: <https://www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/>

### **As a working owner, what's involved for me?**

If you are paid as an employee of the farm, you are treated no differently than any other employee.

If you are paid drawings then you are not an employee.

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## Leave payments

### How much annual leave do I have to pay?

The National Employment Standards, referred to as the NES (national system) and the Minimum Conditions of Employment Act (state) set out minimum leave entitlements for employees. While an Award can provide for other leave entitlements, they can't be less than what is in the NES or MCEA.

Full-time employees are entitled to 4 weeks of annual leave, based on their ordinary hours of work. Check the relevant Award carefully, as some Awards provide for extra annual leave for shift workers.

### Do I have to pay leave loading?

There is no requirement under the NES or in the Industrial Relations legislation to pay leave loading. However, some Awards do provide for leave loading, so check the relevant Award to find out if you are obliged to pay this.

### Do I need to pay long service leave?

Long service leave entitlements vary from state to state. In WA the entitlement is:

- After 10 years of continuous employment working in the same business –  $8\frac{2}{3}$  weeks of paid leave.
- For every 5 years of continuous employment working in the same business after the initial 10 years –  $4\frac{1}{3}$  weeks paid leave.

### Do I pay out sick leave when an employee leaves?

No. Unused sick leave (properly known as sick and carer's leave) is not paid out to an employee when the leave. You need only pay an employee their unused annual leave and long service leave.

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## Superannuation

### Do I have to pay my employee superannuation?

Super is money you pay for your workers to provide for their retirement.

The minimum you must pay is called the super guarantee (SG):

- The SG is currently 11% of an employee's ordinary time earnings.
- You must pay SG at least four times per year, by the quarterly due dates.
- You pay into a complying super fund. Most employees are eligible to choose which fund you pay into.
- If you don't pay the SG on time, you may have to pay the super guarantee charge.

### What do I pay super on?

The Superannuation Guarantee is 11 % of an employee's ordinary time earnings.

Ordinary time earnings are generally what your employees earn for their ordinary hours of work, including: over-award payments, commissions, shift loading, allowances, bonuses.

Ordinary time earnings does not include: overtime, leave loading, parental leave, ancillary leave such as jury duty, termination payments for unused annual leave, sick leave or long service leave.

### What do I do if my employee doesn't nominate a super fund?

If an employee doesn't specify a preferred super fund, you must first check to see if they have a stapled superfund. See <https://www.ato.gov.au/Business/Super-for-employers/Stapled-super-funds/>

If there is no stapled superfund then you may pay their super into a default fund with a MySuper option for contributions.

Many Modern Awards specify the default funds you can choose from. You may want to try the Industry Super Fund Finder to work out which Industry SuperFunds are listed in awards relevant to your employees. <http://www.industrysuper.com/for-employers/default-fund-finder/>

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## Wages

### **I provide my employees with a house to live in, a farm ute and a telephone. What tax implications are there for me?**

Provision of employee benefits (eg housing, telephone and utilities) would **normally** be subject to fringe benefits tax. This would cost the farm an extra 45.47% in fringe benefit tax on any benefit provided.

However, if your farm is at least 40km from an urban centre with a population of 28,000 or more (ie Albany) then you are in a remote area. If you are in a remote area, any remote area housing and utility benefits are exempt from FBT. This means no FBT is payable by the farm.

The remote area exemption also applies if you provide up to two meals per day per employee.