



SRC Legal Service

FOR SYDNEY UNI UNDERGRADUATES

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Employment Law practical guidelines – 14 Feb 2018

Fair Work Ombudsman: <https://www.fairwork.gov.au/>

Unfair Dismissal

- **Unfair Dismissal** webpage: <https://www.fairwork.gov.au/ending-employment/unfair-dismissal>
- **Do you work at a small or big business?**
 - “Employees have to be employed for at least 6 months before they can apply for unfair dismissal.”
 - “Employees working for a small business have to be employed for at least 12 months before they can apply.”
 - “A small business is defined as any business with fewer than 15 employees.”

Fair Work Ombudsman telephone number:

- “Our number is **13 13 94**. We’re open 8am - 5.30pm Monday to Friday (except for public holidays). The average wait time can be around 30 minutes.”
- Calling the Fair Work Ombudsman may be the simplest method in some cases
- You must know the ABN (Australian Business Number) of your workplace
 - **ABN Look-up webpage:** <https://abr.business.gov.au/>

Pay Calculator

- **Pay Calculator:** <https://calculate.fairwork.gov.au/findyouraward>
- On this page, you can work out which award you are covered under and what your pay rate is
- Information on Awards is provided by this webpage: <https://www.fairwork.gov.au/awards-and-agreements/awards>
 - An example is the Hospitality Industry (General) Award 2010 [MA000009]

Minimum wages

- Information on Minimum wages is provided by this webpage: <https://www.fairwork.gov.au/pay/minimum-wages>
- If you are **under 21 years of age, junior pay rates** apply: <https://www.fairwork.gov.au/pay/minimum-wages/junior-pay-rates>
 - “The percentages that apply are usually based on the employee’s age and increase on their next birthday.”
 - The pay rate also changes on the 1st of July
- You can use the Pay Calculator to calculate junior pay rates
- Many of the award rates are expressed as being from 2010, however, check that you are looking at the most updated version of the award.

Employee Entitlements

- Webpage: <https://www.fairwork.gov.au/employee-entitlements>
- “An employee’s minimum entitlements are set out in the National Employment Standards (NES) and awards. A registered agreement or employment contract can provide for other entitlements but they can’t be less than what’s in the NES or the award that applies.”

Fair Work Act 2009

- http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fwa2009114/

- Under ss 340 and 341 of the *Fair Work Act* 2009, your “workplace rights” are protected, including asking your employer about your pay rate, working conditions and making complaints.
 - s 340: http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s340.html
 - s 341: http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s341.html
- If there are adverse consequences as a result of you exercising your workplace rights then you may be able to bring legal action as there may be a breach of s 340.
 - You may be able to bring legal action in the Fair Work Commission/Federal Court(s).

SRC Legal Service (Pty Ltd)

- Is an independent free legal service to undergraduate students at the University of Sydney. We stay on a matter until it finishes, even if the student has finished their study or enrolment.
- The SRC Legal Service often calculates underpayment of wages and sends Letters of Demand to employers.
- Employers usually prefer to resolve the employment issue after receiving Letters of Demand from the SRC Legal Service, to avoid being reported to and audited by the Fair Work Ombudsman or the Australian Taxation Office (eg unpaid superannuation).
- Unpaid wages are a debt for 6 years enforced in the Local Court (Industrial Magistrate).

Superannuation

- Webpage: <https://www.fairwork.gov.au/pay/tax-and-superannuation#1728-1732>
- “Superannuation guarantee
Under the superannuation guarantee, employers have to pay superannuation contributions of 9.5% of an employee's ordinary time earnings if:
when an employee is paid \$450 or more before tax in a month and is:.....This applies to full-time and part-time employees and some casual employees, and includes temporary residents. Superannuation has to be paid at least every 3 months, into the employee's nominated account.”

Casual Employment

- Webpage: <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees#2096-2100>
“A casual employee:
 - has no guaranteed hours of work
 - usually works irregular hours (but can work regular hours)
 - doesn't get paid sick or annual leave
 - can end employment without notice, unless notice is required by a registered agreement, award or employment contract.

How is casual different to full-time or part-time?

Full-time and part-time employees have

- ongoing employment (or a fixed-term contract) and can expect to work regular hours each week.
- They are entitled to paid sick leave and annual leave.
- Full-time and part-time employees must give or receive notice to end the employment.

What do casual employees get?

Casual employees are entitled to:

- a higher hourly pay rate than equivalent full-time or part-time employees. This is called a 'casual loading' and is paid because they don't get benefits such as sick or annual leave
- 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion
- unpaid
- community service leave. “

Other references – NSW Law Handbook - <http://legalanswers.sl.nsw.gov.au/law-handbook-your-practical-guide-law-nsw/employment>