

EMPLOYER'S GUIDE TO

MAKING AN AUSTRALIAN WORKPLACE AGREEMENT



Australian Government
Office of the Employment Advocate

STEP ONE

Follow this checklist for making an Australian workplace agreement:

- Your Australian workplace agreement meets the Australian Fair Pay and Conditions Standard (the Standard)
- You are eligible to make an Australian workplace agreement (refer to Employers, Additional information on Who can make an agreement, at www.oea.gov.au)
- If applicable to your employee, you have noted and considered the protected award conditions
- You have included a dispute settlement procedure
- You have not included prohibited content
- If applicable to you, you have included mandatory provisions in relation to basic rates of pay and casual loading for Victorian employees (refer to Employers, Additional information on WorkChoices operating in Victoria, at www.oea.gov.au)
- You gave your employee the *Information Statement for Employees (Australian workplace agreements)* at least seven days before the Australian workplace agreement was signed by both you and your employee
- You recognised your employee's bargaining agent, if one was appointed in writing
- You gave your employee at least seven days to consider the Australian workplace agreement, unless they waived this period
- You and your employee signed and dated the Australian workplace agreement, and had your signatures witnessed
- If your employee is under the age of 18, an appropriate person over the age of 18 years (such as a parent or guardian, but not the employer) also signed the Australian workplace agreement and that signature was witnessed
- The witness to the signatures must not be the other party to the Australian workplace agreement, their bargaining agent, or where the other party is a corporation, a director or person involved in the day to day management of the corporation
- Your full name and address, the employee's full name and address and the full names and addresses of witnesses are included in the Australian workplace agreement
- An explanation is provided as to the person's authority to sign the Australian workplace agreement for the employer
- Your employee has not been forced to make the Australian workplace agreement (however, making an Australian workplace agreement can be a condition of employment for a new employee)

STEP TWO

Make your declaration by either:

- Completing the declaration online via www.oea.gov.au

OR

- Completing the *Employer Declaration Form – Australian workplace agreements*, which is available to order or download from Publications - Australian workplace agreements, on www.oea.gov.au. If you are lodging individual Australian workplace agreements for a number of employees you must complete an *Employer Declaration Form – Australian workplace agreement Part C: Employee details* for each.

To declare that (in summary):

- The information provided is true and correct
- The agreement being lodged is a copy of an Australian workplace agreement
- The Australian workplace agreement has been signed and dated by both you and your employee, and witnessed
- If the employee is under the age of 18, an appropriate adult (such as a parent or guardian, but not the employer) has also signed the Australian workplace agreement and that signature was witnessed
- You gave your employee at least seven days to consider the Australian workplace agreement, or this period was waived in writing
- You gave your employee the *Information Statement for Employees (Australian workplace agreements)* at least seven days before the Australian workplace agreement was signed by you and your employee
- You recognised your employee's bargaining agent, if one was appointed in writing
- The Australian workplace agreement is being lodged within 14 days of signing

STEP THREE

Lodge your declaration and the Australian workplace agreement by either:

Lodging online via www.oea.gov.au

And ensure you:

- Complete the online declaration
- Attach a copy of the Australian workplace agreement

OR

Lodging by post at this address:

Office of the Employment Advocate
Locked Bag 12
MARRICKVILLE NSW 2204

And ensure you:

- Include the completed *Employer Declaration Form – Australian workplace agreement*. If you are lodging individual Australian workplace agreements for a number of employees you must include a completed *Employer Declaration Form – Australian workplace agreement Part C: Employee details* for each.
- Attach a copy of the Australian workplace agreement(s)

Remember, you must lodge within 14 days of the last signature.

Note

- Your Australian workplace agreement(s) starts to operate as soon as it is lodged.
- You and your employee(s) will receive receipts from the Office of the Employment Advocate (OEA).
- You must keep a signed copy of the Australian workplace agreement for the duration of the agreement and for seven years after the agreement is terminated.

IMPORTANT INFORMATION

Australian Fair Pay and Conditions Standard

An Australian workplace agreement cannot override an employee's minimum entitlements under the Australian Fair Pay and Conditions Standard (the Standard).

The minimum conditions covered in the Standard are:

- (1) a federal minimum wage, minimum award classification rates of pay, and casual loadings set by the Australian Fair Pay Commission;
- (2) four weeks paid annual leave per year (five weeks for continuous shift employees) up to two weeks of which can be cashed out in a workplace agreement;
- (3) ten days paid personal/carer's leave per year and two days compassionate leave per occasion;
- (4) up to 52 weeks unpaid parental leave (maternity, paternity and adoption); and,
- (5) maximum ordinary hours of work limited to 38 hours per week (which can be averaged over twelve months in an agreement or award) and reasonable additional hours.

Protected award conditions in bargaining

An Australian workplace agreement overrides the award(s) that would otherwise apply. Where an employee on an Australian workplace agreement would otherwise be covered by an award, certain award conditions are protected, when the agreement is made. These award conditions can be the subject of bargaining, but can only be removed or modified by specific provisions in the new Australian workplace agreement. Protected award conditions will become part of any Australian workplace agreement to the extent that the agreement does not expressly exclude or modify them.

The protected award conditions are public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates, conditions applying to outworkers, and shift/overtime loadings. Note certain award conditions applying to outworkers cannot be changed to provide for a less favourable outcome.

Mandatory content for Victorian workplace agreements

For Victorian employers who are not constitutional corporations and their employees, Australian workplace agreements must contain mandatory terms (guarantees of minimum wage rates and casual loadings) without which they would be void.

Prohibited content

Some content cannot be included in an Australian workplace agreement. If such content is included when an agreement is lodged, it will be unenforceable, but it will not render the Australian workplace agreement invalid.

There are penalties of up to \$33,000 for lodging an Australian workplace agreement which includes prohibited content. An employer can ask the OEA to check an Australian workplace agreement for prohibited content, before the agreement is made.

Prohibited content includes terms of a workplace agreement that:

- (1) deals with pay deductions and payroll deduction facilities for trade union membership subscriptions or dues
- (2) allows employees to receive leave to attend union training sessions or paid leave to attend union meetings
- (3) deals with the rights of trade unions or employer associations to be involved in dispute resolution (unless the organisation is the representative of the employer or employee's choice)
- (4) deals with right of entry by unions and employer associations
- (5) deals with the renegotiation of a workplace agreement
- (6) restricts an employer from using independent contractors or labour-hire arrangements
- (7) deals with the forgoing of annual leave credited to an employee bound by the agreement (otherwise than in accordance with the *Workplace Relations Act 1996*)
- (8) requires the provision of employee information to trade unions unless required by law
- (9) directly or indirectly encourages other persons bound by the agreement to become or remain member of an industrial association
- (10) directly or indirectly discourages other persons bound by the agreement to not become or not remain a member of an industrial association
- (11) requires a person bound by the agreement to indicate support, or lack of support for persons bound by the agreement being members of an industrial association
- (12) allows persons bound by the workplace agreement to engage in or organise industrial action
- (13) prohibits or restricts disclosure of a workplace agreement's details by parties to the agreement
- (14) provides a remedy for dismissal for a reason that is harsh unjust or unreasonable
- (15) is discriminatory in that it discriminates against an employee bound by the agreement because of or for reasons including race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. A provision is not discriminatory merely because it provides for rates in accordance with the relevant Australian Pay and Classification scale or federal minimum wage; or discriminates on the basis of the inherent requirements of the employment; or it is in respect of employment in an institution conducted in accordance with particular teachings/beliefs of a particular religion or creed and discriminates on the basis of those teachings/beliefs and is done in good faith
- (16) is objectionable in that it is a provision that requires or permits any conduct that would contravene the freedom of association provisions of the *Workplace Relations Act 1996* including a provision that requires payment of a bargaining services fee to an industrial organisation
- (17) deals with a matter that does not pertain to the employment relationship (unless it is ancillary/incidental/a machinery matter/or is trivial)
- (18) directly or indirectly restricts the ability of Australian workplace agreements to be offered, negotiated or entered into, or
- (19) prevents an employer from making an Australian workplace agreement (this is the only type of prohibited content that is relevant for the content of pre-reform certified agreements, preserved state agreements and notional agreements preserving state awards).

For more information on prohibited content, refer to Employers, Additional information on Prohibited Content, at www.oea.gov.au

Dispute settlement procedure

Every Australian workplace agreement must have a dispute settlement procedure. Where an agreement is lodged without a dispute settlement procedure, the model procedure in the *Workplace Relations Act 1996* will automatically apply to disputes about the Australian workplace agreement.

Nominal Expiry Date

An Australian workplace agreement may include a nominal expiry date, up to a maximum of five years. Where an Australian workplace agreement does not include a nominal expiry date, the date will be the fifth anniversary of its lodgment. An Australian workplace agreement continues to operate after the nominal expiry date is passed, until it is either terminated or replaced.

Bargaining agents

The employer and employee may each appoint a bargaining agent to represent them in relation to the making of the Australian workplace agreement. A bargaining agent must be appointed in writing. The employer and the employee must not refuse to recognise the other's bargaining agent, as long as they have been given a copy of the relevant written appointment.

Information Statement for Employees

The employer must give every employee offered an Australian workplace agreement a copy of the *Information Statement for Employees (Australian workplace agreements)* at least seven days before the agreement is signed.

The *Information Statement for Employees (Australian workplace agreements)* can be ordered or downloaded from Publications - Australian workplace agreements, on www.oea.gov.au

Seven day 'ready access period'

The employer must give the employee at least seven days to consider a proposed Australian workplace agreement, before it is signed. This means that the employee must have, or have access to, the proposed Australian workplace agreement, as well as the *Information Statement for Employees (Australian workplace agreements)*. If they wish, the employee can waive, in writing, the seven day period for access to the Australian workplace agreement, but not for the *Information Statement for Employees (Australian workplace agreements)*.

Australian workplace agreement must be signed

An Australian workplace agreement must be signed and dated by both the employer and employee, and their signatures must be witnessed. The agreement must include the full name and address of the employer and employee. The person who signs the agreement on behalf of the employer must provide an explanation of their authority to sign the agreement for the employer.

Where the employee is under the age of eighteen, an appropriate adult, such as their parent or guardian, must also sign the Australian workplace agreement and have their signature witnessed.

The witness to a parties' signatures for an Australian workplace agreement must not be the other party to the agreement, their bargaining agent, or where the other party is a corporation, a director or person involved in the day to day management of the corporation. The witness must also include their full name and address.

Declaration

An Australian workplace agreement starts operating when the declaration and the Australian workplace agreement are lodged with the OEA. It is the employer's responsibility to make sure that any Australian workplace agreement they lodge meets the legal requirements and to make a declaration to this effect.

If lodging the Australian workplace agreement online, the declaration can also be made online. If lodging by post, the declaration must be made on the *Employer Declaration Form – Australian workplace agreement*. If you are lodging individual Australian workplace agreements for a number of employees you must complete the *Employer Declaration Form – Australian workplace agreement Part C: Employee details* for each.

Lodging

The declaration and the Australian workplace agreement can be lodged online or by post, but must be lodged within 14 days of the last signature on the Australian workplace agreement.

If lodged online, the lodgement can also be completed online.

If lodged by post, the *Employer Declaration Form – Australian workplace agreement* must be completed. If you are lodging individual Australian workplace agreements for a number of employees you must include the completed *Employer Declaration Form – Australian workplace agreement Part C: Employee details* for each.

Remember: Lodgement is not completed until the declaration is received by the OEA.

Retention of signed agreement

An employer must retain a signed copy of the Australian workplace agreement for the duration of the agreement and for a period of seven years after it is terminated.