

EMPLOYER'S GUIDE TO

MAKING AN EMPLOYEE COLLECTIVE AGREEMENT



Australian Government
Office of the Employment Advocate

STEP ONE

Follow this checklist for making an employee collective agreement:

- Your employee collective agreement meets the Australian Fair Pay and Conditions Standard (the Standard)
- You are eligible to make an employee collective agreement (refer to Employers, Additional information on Who can make an agreement, at www.oea.gov.au)
- If applicable to your employees, 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 all employees currently employed, and who will be covered by the employee collective agreement, a copy of the *Information Statement for Employees (Collective agreements)* at least seven days before the employee collective agreement was approved by the employees
- You included in the *Information Statement for Employees (Collective agreements)* details of how and when you would seek approval of the collective agreement by the employees
- You gave all employees currently employed, and who will be covered by the agreement, a copy of the employee collective agreement, or ready access to it, at least seven days before it was approved by the employees
- If the agreement incorporates conditions from another workplace agreement or award, you gave the employees ready access to it
- You gave all employees currently employed, and who will be covered by the agreement, a reasonable opportunity to decide whether they wished to approve the agreement
- You gave any employees, employed in the seven days prior to the agreement's approval, the *Information Statement for Employees (Collective agreement)* and the agreement, or access to it, as soon as they started work
- You met and conferred with any bargaining agents appointed by your employees

- The agreement was approved either by:
 - a vote, in which a majority of the employees casting a vote, approved, or
 - if another method was used, a majority of employees indicating that they approved
- No employees were forced to approve the agreement
- The agreement includes the signatures of both the employer and a representative of the employees to the agreement or a bargaining agent appointed by an employee or employees
- The parties' signatures are accompanied by the full name and address of each person signing the agreement and an explanation of that person's authority to sign the agreement

STEP TWO

Make your declaration by either:

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

OR

- Completing the *Employer Declaration Form – Employee collective agreement* which is available to order or download from Publications - Employee collective agreements, on www.oea.gov.au

To declare that (in summary):

- The information provided is true and correct
- The agreement being lodged is a copy of an employee collective agreement
- You gave all your employees the agreement, or ready access to it, at least seven days before approval (unless all employees waived this in writing)
- You gave all your employees the completed *Information Statement for Employees (Collective agreements)* at least seven days before the agreement was approved
- You gave all your employees, employed in the seven days prior to approval, the *Information Statement for Employees (Collective agreements)* and the agreement, or ready access to it, as soon as they started work
- Your employees approved the employee collective agreement before lodgement by either: a vote where a majority of employees who voted approved; or another method where a majority of employees decided to approve the agreement
- The employee collective agreement is being lodged within 14 days of its approval

STEP THREE

Lodge your declaration and the employee collective agreement by either:

Lodging online via www.oea.gov.au

And ensure you:

- Complete the online declaration
- Attach a copy of the employee collective 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 – Employee collective agreement*
- Attach a copy of the employee collective agreement

Remember, you must lodge within 14 days of the agreement's approval by employees.

Note

- Your agreement starts to operate as soon as it is lodged.
- You will receive a receipt from the Office of the Employment Advocate (OEA). You must provide a copy of your receipt to each employee covered by the agreement within 21 days of receiving it.
- You must keep a signed copy of the Employee collective 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 employee collective agreement cannot override an employee's minimum entitlements under the Australian Fair Pay and Conditions Standard (the Standard).

The minimum conditions in the Standard are:

- (1) a federal minimum wage, Australian Pay and Classification scales 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 if provided for 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) a limit to the maximum ordinary hours of work to 38 hours per week (which can be averaged over twelve months in an agreement, or by other written agreement) and reasonable additional hours.

Protected award conditions in bargaining

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

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, employee collective agreements must contain mandatory terms (guarantees of minimum wage rates and casual loadings) without which they would be void (refer to Employers, Additional information on WorkChoices operating in Victoria, at www.oea.gov.au).

Prohibited content

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

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

Nominal Expiry Date

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

Information Statement for Employees

The employer must give every employee currently employed, and who will be subject to the agreement, a copy of the *Information Statement for Employees (Collective agreements)* at least seven days before the agreement is approved.

If any employees are employed within seven days prior to the agreement's approval, the employer must give those employees a copy of the *Information Statement for Employees (Collective agreements)* when they are employed.

The employer must include in the *Information Statement for Employees (Collective agreements)* details about how and when they will seek the employees' approval of the collective agreement. For example, if approval is to be determined by a vote, the employer must include details about how and when the vote will be conducted.

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

Bargaining agents

An employee may request another person, a bargaining agent, to represent them in meeting and conferring with the employer about the agreement. The employer must give the bargaining agent a reasonable opportunity to meet and confer during the seven day 'ready access period'.

Seven day 'ready access period'

The employer must take reasonable steps to ensure that all employees currently employed, and who will be covered by the agreement, have the proposed agreement, or have ready access to a copy of it, at least seven days before the agreement is approved. The employees can waive this seven day period, but the waiver must be in writing, and be signed and dated by all employees who will be covered by the agreement.

If the collective agreement includes terms from another workplace agreement or award, the employer must also give the employees the other workplace agreement or award, or give them ready access to it. If any employees are employed within the seven days prior to the agreement's approval, they too must be given the agreement, or ready access to it, when they are employed.

Approving the agreement

The employer must give all employees currently employed, and who will be covered by the agreement, a reasonable opportunity to decide whether they want to approve the agreement. The agreement is approved either by a vote in which a majority of the employees casting a vote approve or, if another method is used, by a majority of employees indicating they approve. Another method could be, for example, asking employees to indicate their approval by email.

Signing of workplace agreements

An employee collective agreement must include the signatures of both the employer and a representative of the employees to the agreement or a bargaining agent appointed by an employee. The parties' signatures must be accompanied by the full name and address of each person signing the agreement and an explanation of that person's authority to sign the employee collective agreement.

Declaration

An employee collective agreement starts operating when the declaration and the Employee collective agreement are lodged with the OEA. It is the employer's responsibility to make sure that the employee collective agreement meets the legal requirements and to make a declaration to this effect.

If lodging the employee collective agreement online, the declaration can also be made online. If lodging by post, the declaration must be made on the *Employer Declaration Form – Employee collective agreement* provided by the OEA.

Lodging

The declaration and the employee collective agreement can be lodged online or by post, but must be lodged within 14 days of approval by the employees.

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

If lodged by post, the *Employer Declaration Form – Employee collective agreement* must be completed.

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 workplace agreement for the duration of the agreement and for a period of seven years after it is terminated.