



WORKERS' RIGHTS
A GUIDE FOR EMPLOYEES

Working Women's Centre SA Inc. Legal Services Commission OF SOUTH AUSTRALIA Australian Government Fair Work OMBUDSMAN



Workers' Rights is a simple guide to workplace entitlements under the Fair Work Act 2009 designed to assist workers to understand their rights and obligations. It provides information about common work related problems and points readers to services that can help with workplace issues. Workers are entitled to receive at least their minimum entitlements, to be paid fairly and to work in an environment that is safe and free from harassment or discrimination. Laws relating to workplace issues can be complex. This booklet is intended as a guide only. If you are confused or in doubt about your workplace situation contact the agencies listed at the back of this booklet for further help.

© Legal Services Commission and Working Women's Centre (SA)

Workers' Rights is a joint initiative between the Legal Services Commission of South Australia and the Working Women's Centre SA. The guide deals predominantly with South Australia, however, it also contains sections dealing with the Federal Fair Work Act 2009 and generally applicable information. Since 1 January 2010, all private sector employees in South Australia are covered by the Fair Work Act 2009. The Fair Work Act 2009 establishes a safety net of employee entitlements with the National Employment Standards (NES) and modern awards. State public sector and local government employees remain under the state industrial relations system. This material has been funded by the Australian Government through a Fair Work Ombudsman initiative to produce educative materials on the Fair Work Act 2009.

Disclaimer: The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The information contained in this publication within the FWO's jurisdiction as set out in the Fair Work Act 2009 is; general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on 20 June 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information.

CONTENTS

Before you apply for or accept a job	5
Awards, Agreements and Employment Standards	7
What are the different ways of working?	11
What about my pay?	15
When your job ends	19
Unfair dismissal	23
Unlawful termination	27
What leave can I take?	29
Balancing work and life	39
Negotiating with your employer	43
Superannuation	47
Workers' compensation	49
Workplace health and safety	51
Discrimination	53
Sexual harassment	55
Adverse action	57
Workplace bullying	60
Unions and employee associations	65
What else do I need to know?	66
Where can I get more help?	67

876-0468
OBS OFFER

It is best to wait for confirmation in writing of a new job if you can, before handing in notice at your current employment.

BEFORE YOU APPLY FOR OR ACCEPT A JOB

Getting a job offer

You may receive a job offer in person, by phone or in writing. This may follow a job selection process. If you are offered a job in person or over the phone it is best to ask for written confirmation of the offer.

Written confirmation of a job offer should state:

- the job title and a brief job description;
- the location;
- any conditions you need to meet (for example, satisfactory references and health record);
- the terms (for example, pay, hours and holiday entitlement);
- the starting date and any induction period; and
- what (if anything) you have to do next and by when.

It is best to wait for confirmation in writing of a new job if you can, before handing in notice at your current employment.

Be careful with social media

When applying for a job or position you can expect that your prospective employer will check your online presence. You may like to check that your social media sites (such as Facebook) contain only information that

you want a current or future employer to see. Remember that anything you have posted is likely to be available to any other user. If it is clear that you use your site to speak unwisely about your current employer they may be entitled to take action about this. A prospective employer may decide not to offer you a job if your social media presence portrays a negative attitude to your work or your current employer.

If you don't get a job offer

If you are not successful with a job application, it is a good idea to find out why. However, the employer doesn't have to give you any feedback.

If an employer withdraws a job offer before you have a chance to accept, or because you haven't met the conditions (for example, providing a satisfactory reference), you can't take any action. The exception to this is if the job offer has been withdrawn for reasons of unlawful discrimination, for example, on the basis of an illness or pregnancy, race, sexual preference, religion or political opinion. This is known as adverse action and is against the law. If you think this has happened to you, contact the Fair Work Infoline on 13 13 94 for assistance.

Signing offers and contracts

If you are asked to sign a document agreeing to work conditions, you should first read it very carefully. Do not feel pressured to sign it straight away, especially if it doesn't suit you. Ask your employer for time to consider the document. It is usually reasonable to be given some time to check the offer and get some advice if you need to, for example about rates of pay, leave, hours of work, etc. Feel free to take the agreement home and get other people you trust to read it over with you. You may want to seek legal advice before you make your decision.

Depending on how you are employed, the document setting out your terms and conditions could be a modern award or an enterprise agreement.

Your minimum terms and conditions of employment are set by the National Employment Standards (NES). See the section on Awards and Agreements for more information. For information on modern awards and which one covers your work, contact the Fair Work Infoline on 13 13 94 or your Union if you are a member.



**Your contract of
employment should be
based on the award or
enterprise agreement
that applies to you.**

AWARDS, AGREEMENTS AND EMPLOYMENT STANDARDS

Your workplace rights and conditions are protected by law. The *Fair Work Act 2009* generally applies to 'national system' employers. This includes all private sector employers in South Australia. The safety net provisions of the *Fair Work Act 2009* commenced on 1 January 2010. These provisions include the National Employment Standards, modern awards and national minimum wage orders for award/agreement free employees.

The National Employment Standards (NES) provide minimum entitlements to all employees. In addition to the NES, your terms and conditions of employment can come from a modern award, agreement, pre-modern award and state or federal laws. The NES make up the safety net that cannot be altered to the disadvantage of an employee. Terms in awards and agreements and individual contracts may supplement the NES by providing more generous entitlements, but they cannot exclude, or provide for an entitlement that is less than the NES.

The ten minimum standards in the NES cover:

- **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
- **Requests for flexible working arrangements** – parents or carers of a child under school age or of a child under 18 with a disability have the right to request a change in working arrangements to assist with the child's care. Your employer may refuse such a request on 'reasonable business grounds'.
- **Parental leave and related entitlements** – up to 12 months' unpaid leave, plus a right to request an additional 12 months' unpaid leave.
- **Annual leave** – four weeks' paid leave per year (pro-rata for part-time employees), plus an additional week for certain shift workers.
- **Personal/carer's leave and compassionate leave** – 10 days' paid personal/carer's leave (for permanent full-time employees, pro-rata for part-time employees, casuals are not eligible), two days' unpaid carer's leave as required (including casuals), and two days' paid compassionate leave (unpaid for casuals) as required.
- **Community service leave** – unpaid leave for certain voluntary emergency activities and up to 10 days' paid leave for jury service.
- **Long service leave** – for most employees in South Australia, 13 weeks after 10 years of service (pro-rata after seven years).
- **Public holidays** – a paid day off on a public holiday for permanent employees who would normally work on that day. Your employer may make a reasonable request for you to work on a public holiday, but you may reasonably refuse such a request.
- **Notice of termination and redundancy pay** – the notice period will depend on length of service. If you are over 45 with more than two years service, you are entitled to an additional weeks' notice. Redundancy pay will also depend on your length of service with an employer, and there are additional transitional arrangements in place that will affect how redundancy pay is calculated.

- **Provision of a Fair Work Information Statement** – employers must provide this statement to all new employees. It contains information about the National Employment Standards, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman. To download a copy of the Fair Work Information Statement visit www.fairwork.gov.au.

A certain amount of flexibility is also allowed in the operation of the NES. For example, awards and agreements may specify terms that are flexible in relation to:

- averaging an employee's ordinary hours of work
- the cashing out and taking of paid annual leave
- the cashing out of paid personal/carer's leave
- the substitution of public holidays
- situations in which redundancy pay entitlements do not apply.

For more information about the NES see the sections on Leave, When your job ends and What are the different ways of working.

Modern Awards

The modern award that applies to your industry or occupation will apply to you unless the award has been replaced by an enterprise agreement. If you are a manager or a high income employee (those employees who are not covered by an enterprise agreement and who earn more than \$123,300 per year as at 1 July 2012) the modern award may not apply to you, but the NES will.

A modern award covers things such as:

- Penalty rates
- Types of employment
- Flexible working arrangements
- Superannuation
- Hours of work
- Rest breaks
- Classifications
- Allowances
- Leave and leave loadings
- Procedures for consultation, representation and dispute settlement
- Redundancy entitlements

Enterprise Agreements

Your wages and employment conditions may be set in an enterprise agreement that applies at your workplace. An enterprise agreement replaces the modern award, but not the NES, which continues to apply. An enterprise agreement must be genuinely agreed to by the majority of employees at the workplace, and must leave employees better off overall than they would be if the award applied.

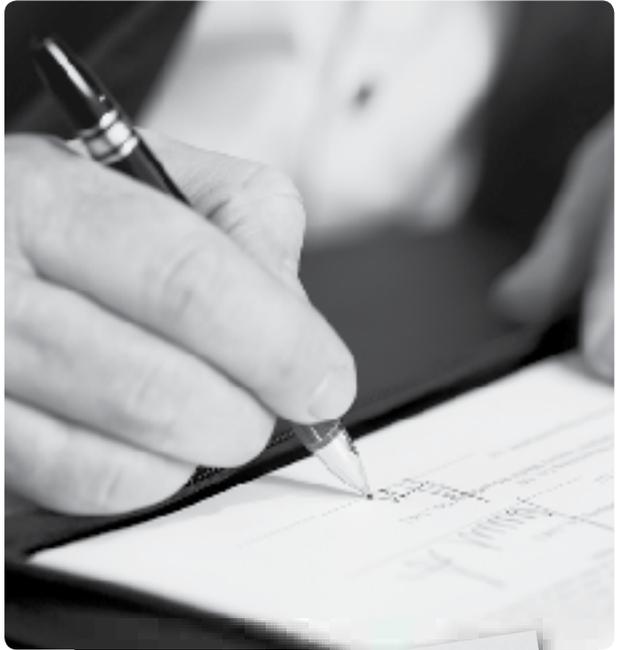
Unions can be parties to enterprise agreements, or the agreement can be with the employees directly. Employees are entitled to have Union representation during the bargaining process if they wish. Once approved by the Fair Work Commission, your enterprise agreement is enforceable and may provide for changes in your terms and conditions of employment.

What about employment contracts?

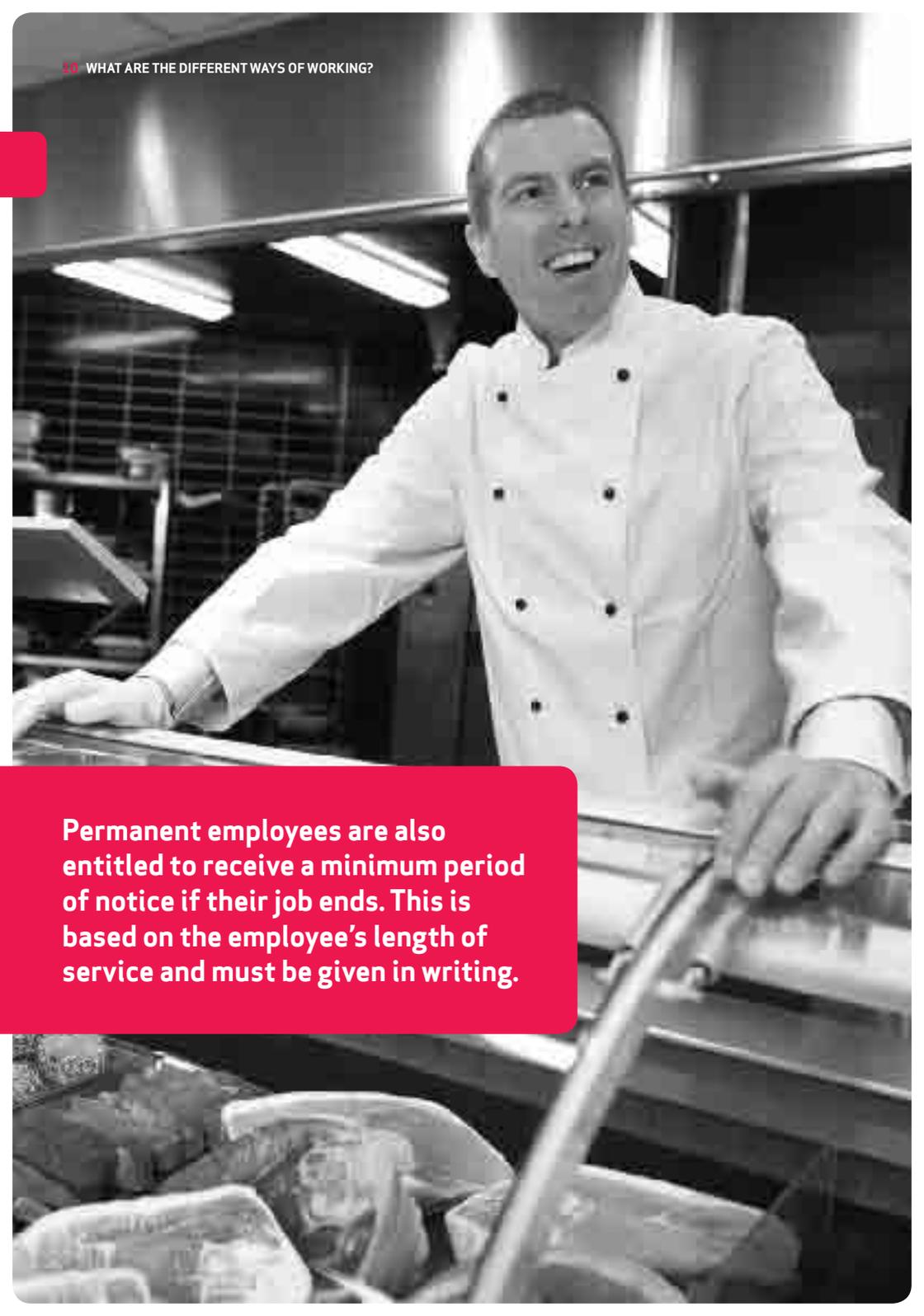
Your contract of employment should be based on the award or enterprise agreement that applies to you. While your employer may provide better conditions than what is provided for under the award, you cannot “contract out of” any minimum entitlements. You may however use an Individual Flexibility Agreement to vary certain modern award entitlements.

Individual Flexibility Arrangements

Your modern award or enterprise agreement must include a flexibility term. This term allows you and your employer to agree to an Individual Flexibility Arrangement (IFA), which varies the effect of certain terms of the modern award or enterprise agreement. The IFA must leave you better off overall than you would be if you remained covered by the modern award or agreement without variation. You cannot be forced to sign an IFA. If you change your mind you can cancel the agreement by giving four weeks' notice, in which case your employment returns to award conditions.



To download a copy
of the Fair Work
Information
Statement visit
www.fairwork.gov.au



Permanent employees are also entitled to receive a minimum period of notice if their job ends. This is based on the employee's length of service and must be given in writing.

WHAT ARE THE DIFFERENT WAYS OF WORKING?

Permanent

A **permanent full-time worker** usually works 38 hours a week on a continual and regular basis. A **permanent part-time worker** also works continuous and regular hours but works less than 38 hours per week. Permanent employees have continuity of employment, an expectation of ongoing work and are entitled to paid leave, such as annual leave, personal leave (including sick leave and carer's leave), and parental leave (after 12 months continuous service). Part-time employees will accrue these benefits on a pro rata basis.

Permanent employees are also entitled to receive a minimum period of notice if their job ends. This is based on the employee's length of service and must be given in writing.

Casual

A **casual worker** is usually employed on a short term basis. Their employment is temporary and irregular and there is no guarantee of ongoing work.

Casual workers are not usually entitled to notice of termination, redundancy payments, paid annual leave, paid sick leave, paid carer's leave, or parental leave (however, there may be an entitlement to parental leave if the employee has at least 12 months of regular and systematic employment and a reasonable expectation of the employment continuing). In compensation for this, casual workers are paid an extra loading on top of the hourly rate that would be payable to a full or part time employee performing the same job (most modern awards provide 25% more). This casual loading is prescribed in a relevant award, enterprise agreement or by the National Minimum Wage Order. Casuals are entitled to worker's compensation, and may be entitled to superannuation. Casuals may also be entitled to long service leave if they have worked for a sufficient period for the same employer.

If you are a casual and you work very regular and consistent hours (for example, if you work to a regular roster), and you have a reasonable expectation that work will continue you may be eligible for the right to make an unfair dismissal claim.

Pieceworker

Pieceworkers are generally paid on the basis of results achieved or components produced (e.g. a fruit picker paid on a rate per bucket of fruit picked). In this situation, you may be paid piece rates instead of the rate of pay that would otherwise apply to you under an award or an enterprise agreement. The total amount paid must not be less than that which would otherwise apply and you are also covered by the minimum conditions in the National Employment Standards.

What is a fixed term contract?

Fixed term contracts have an agreed beginning and end and are used when an employer only needs an employee for a specified time or specified task/project. They end on the date or event specified by the employer and employee at the commencement of the contract period.

Employment automatically ends when the contract ends. Ongoing employees are different in that their employment has no previously agreed end date or event and can only end with termination of employment.

Are you an employee or independent contractor?

There is a legal difference between being an employee, and being a contractor, or self-employed. Sometimes this can be quite unclear. It is important to get advice on this, as the legal definition is complex and affects your pay and entitlements. It is important to note that independent contractors are not covered by the National Employment Standards, are not covered by worker's compensation and cannot make a claim for unfair dismissal.

It is important to look at all of the circumstances of the work arrangement to decide whether someone is an employee or a contractor. Generally, contractors use their own tools, have their own insurance and can decide how they will do a job and what they will charge.

If you answer 'yes' to the following questions, you may be an independent contractor:

- Are you conducting a business in your own right, or do you appear to the general public to be working on behalf of the person for whom you perform the work?
- Do you control the way the work is to be done?
- Can you sub-contract the work to others outside the organisation?
- Do you have the option of performing work for a variety of people rather than just performing work for only one person or business?
- Are you paid on a fixed price basis on the completion of the task (whatever time it takes)?
- Do you supply special equipment or tools for the job?
- Do you have your own worker's compensation and public liability insurance?
- Do you pay your own tax?

If you are not sure, you should get further advice, and don't sign any contract before getting advice.

Are you an outworker?

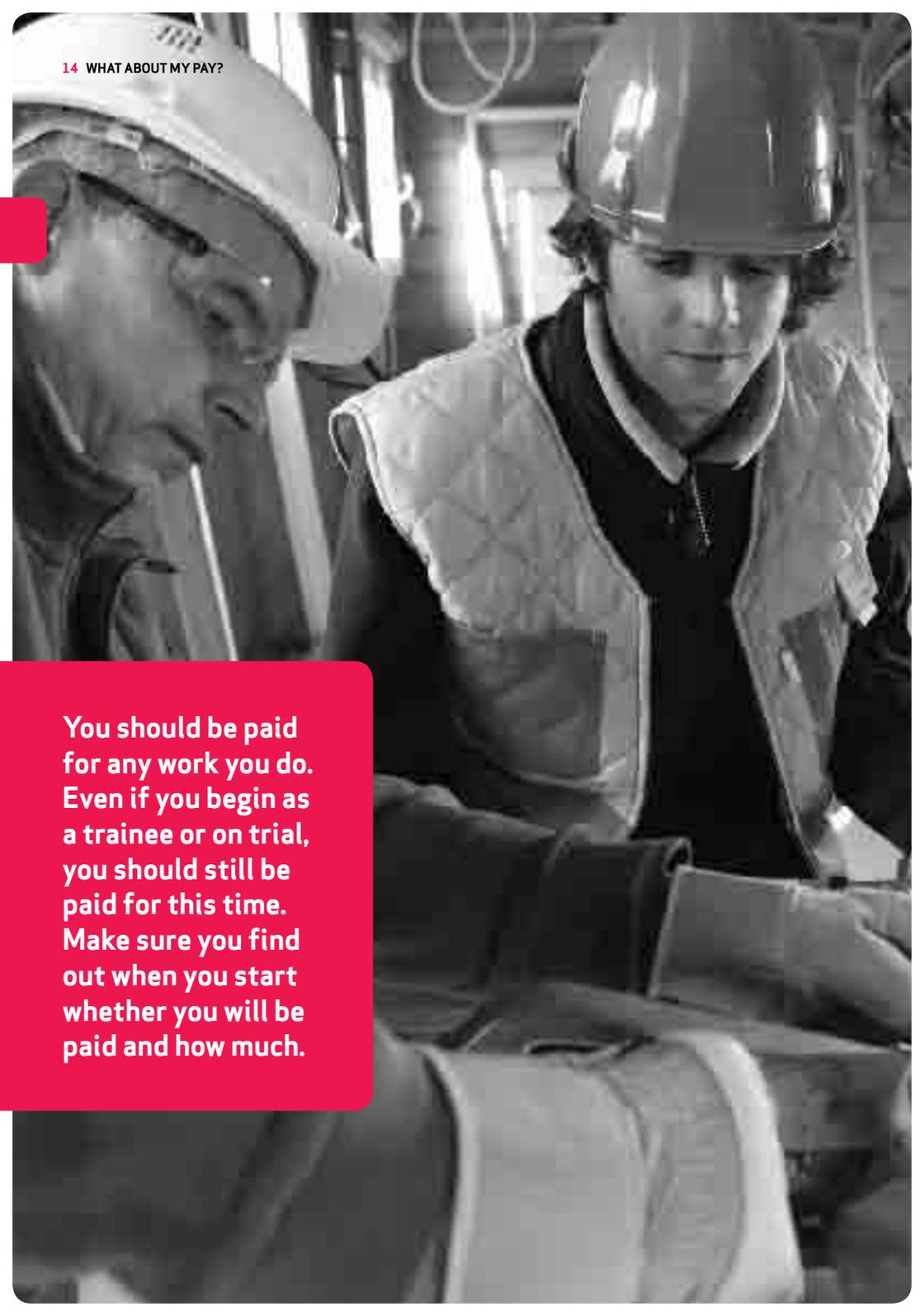
If you do paid work in a private home (away from your employer's workplace) you may be considered to be an outworker. Outwork can include clerical work, sewing, computer processing, child care, and food preparation. There are many outworkers in the clothing industry who work at home or outside a factory making garments or parts of garments. As an outworker you are entitled to the same wages and conditions as workers in clothing factories. You may be covered by an award, or an agreement. You are also covered by the minimum conditions in the National Employment Standards.

Some outworkers in the clothing industry do not always know who contracted them to do the work but may know which company the work is being done for. If you have not been paid correctly for the work you have done and are unsure as to who should pay you, a claim can be lodged with the Fair Work Ombudsman against the company who you believe ordered the work.



It is important to look at all of the circumstances of the work arrangement to decide whether someone is an employee or a contractor.

You should be paid for any work you do. Even if you begin as a trainee or on trial, you should still be paid for this time. Make sure you find out when you start whether you will be paid and how much.



WHAT ABOUT MY PAY?

How do I know if I'm getting the right pay for my job?

Your rate of pay should be set out in your agreement, award, or contract.

If you are not covered by an award or agreement, then the Federal Minimum Wage applies to you as a minimum hourly payment. This does not apply if you are under 21 years old, an apprentice or a trainee. From the 1 July 2011 the Federal Minimum Wage is set at \$15.51 per hour, before tax. Casual adult employees are also entitled to a casual loading on top of their basic hourly rate of pay. The minimum casual loading is 22% on top of the basic rate of pay (previously it was 21%). To check your rate of pay, call the Fair Work Infoline on 13 13 94. You will need to give them details about the kind of work you do, including the hours you work and whether you are permanent or casual. Your inquiry will be kept confidential.

Annual Wage Reviews

Each year, the Fair Work Commission (FWC) reviews the minimum wage in modern awards. The pay rates in an enterprise agreement cannot fall below the award rate or a National Minimum Wage Order. This means that when the annual review takes place, any changes to pay rates in awards or to the National Minimum Wage flows through to those on agreements.

How is my pay calculated?

The amount you should be paid may be affected by many things, including:

- the type of work you do
- the hours you work
- if you work weekends, public holidays, evenings, overtime
- meal breaks
- whether you are permanent, casual or a shift worker
- your age
- your experience and qualifications
- how long you have worked with your employer, and
- if you get an allowance, for example - meal, uniform, or tool allowances.

When should my pay go up?

Your pay may go up:

- when you get a promotion
- if you are a junior and turn a year older or you become an adult (usually 21 years old, but under some awards an adult is 18 years of age)
- if you are an apprentice, when you graduate from one year to the next
- after each year of service within a particular classification
- when an agreement says so
- if and when a pay increase is awarded by FWC, or
- when your contract says you have a salary or performance review where pay increases may be awarded.

If you do not get a pay increase to which you are entitled you may have been underpaid. When your pay goes up so should your employer's contribution to your superannuation.



It's a good idea to keep your own record of pay received and hours worked. Keeping a log book of your hours worked and your payslips, for example, will assist you if a dispute arises over pay or hours.

How often should I be paid?

You must be paid at least monthly, although your award, agreement or contract may provide for more frequent payment (e.g. weekly, or fortnightly). If your pay day falls due on a public holiday, you must be paid at or before the public holiday, otherwise it would be a breach of the Fair Work Act 2009. Most employees are paid by electronic funds transfer (cash deposited electronically into your bank account), in cash or by cheque. Check your award, agreement or contract to see how you should be paid.

Deductions

Your employer must take money out of your pay for tax - but they must get your written permission before taking money out for any other reason. For example, your employer must have your written consent before deducting money for an accidental overpayment of wages. However, if your award or agreement allows, money can be deducted from your termination pay if you leave before working out your notice period. Your employer may also be required by law to take money out for child support or for other purposes if ordered to do so by a court.

In some cases, a deduction may be reasonably authorised under an enterprise agreement, award or contract. For example, if you used a corporate credit card for personal use, or made personal calls on a company mobile phone, or used petrol in a company vehicle for private use. In these cases, your employer will still need your written consent in order to make the authorised deduction.

Pay records are important

You should receive a written notice of how much you have been paid for each pay period and a payment summary (formerly known as a group certificate) for your tax return after 30 June each year. Each payslip should provide details of your gross pay, any allowances paid, and all deductions from your pay (including the amount of tax). When your employer makes a superannuation contribution on your behalf (on top of your ordinary pay) the amount must appear on your payslip.

It's a good idea to keep your own record of pay received and hours worked. Keeping a log book of your hours worked and your payslips, for example, will assist you if a dispute arises over pay or hours.

Underpayment of wages

If you think you have been underpaid, speak to your employer. If you are not satisfied with the result and need further assistance, contact the services at the end of this booklet for help. If you are unable to reach a satisfactory conclusion you may lodge a complaint to the Fair Work Ombudsman. Under the Fair Work Act 2009, it is against the law for your employer to take or threaten to take 'adverse action' against you because you made a complaint or inquiry about your employment (including your pay). Adverse action includes sacking you, denying you access to training or promotions, demoting you, and changing your hours or status.

You can make a workplace complaint for unpaid wages with the Fair Work Ombudsman for up to six years after the wages became payable. You can also make a claim in the Industrial Relations Court of South Australia for money that is owed to you. Your employer is required to keep all your time and wage records but in order to prove that your claim is valid, you are advised to keep your own records of hours worked and amounts paid.

Probationary or trial periods

You should be paid for any work you do. Even if you begin as a trainee or on trial, you should still be paid for this time. Make sure you find out when you start whether you will be paid and how much.

Junior rates

If you are under 21 years of age (or sometimes under 18 years of age), you may receive a junior rate of pay. This is related to your age and is usually set at a percentage of the relevant adult rate of pay. Junior rates of pay can vary depending on the industry in which you work. The rates can be found in your relevant award, agreement or contract. If there is no mention of a junior rate, then you will usually be paid the adult rate instead.

Your contract, award or agreement should state how much notice you should give when resigning. If it is not written down then, as a general rule, the notice period should be at least equal to the pay period.



WHEN YOUR JOB ENDS

There are many different ways that your job may end and each way has different legal requirements and implications.

Resigning

Your contract, award or agreement should state how much notice you should give when resigning. If it is not written down then, as a general rule, the notice period should be at least equal to the pay period. For example, an employee who is paid fortnightly should provide at least two weeks' notice. If you are a casual employee, you are not obliged to give any notice.

Sometimes people feel forced to resign. This may be for various reasons, such as being subjected to ongoing workplace bullying or discrimination. These cases may be considered 'constructive dismissal'. In some cases an employer may not say 'you're sacked', but may still force you to leave because of the things they say, do or fail to do. Or they may direct you to resign or otherwise you will be sacked. This is a complex area and it is important that you get advice before you resign. Once you leave it can be very difficult to make a claim for unfair dismissal or unlawful termination as you must be able to show that your employer's behaviour left you with no reasonable choice but to resign.

Instant dismissals "on-the-spot"

If you are dismissed for serious misconduct you are not entitled to any notice, or pay in lieu of notice. The Fair Work Act 2009 defines serious misconduct as including theft, fraud, committing an assault, being intoxicated at work, behaving in a way that causes serious and imminent risk to the health and safety of a person or to the reputation or viability of the business, or refusing to carry out a lawful and reasonable instruction. Your workplace agreement or policies may also include definitions of serious misconduct. If you are dismissed for serious misconduct you may also lose your entitlement to pro-rata long service leave.

When a fixed contract is completed

A fixed contract is a contract of employment that is 'fixed' for a certain period or for a particular task or project. The contract should state the termination date or circumstances in which the contract is fulfilled.

When you are demoted

If you are demoted and the new position involves a significant reduction in either pay or duties, then it may be considered that you have been dismissed. However, there are situations where a demotion may not be classified as a dismissal, so seek advice if this happens to you.

Winding-up of a business

If a company is in financial trouble, an administrator may be appointed to report on whether the company should continue to operate or be put into liquidation. In some cases, employees miss out on their entitlements (wages, annual leave, etc.) because there are insufficient funds to pay all of the creditors. In order of creditor priority, employees come after secured creditors such as banks, however they come before unsecured creditors such as company traders.

Before considering any offer by an administrator, employees should seek independent advice from an insolvency specialist or from a Union if they are a member.

The Federal Government has introduced a safety net scheme for employees who would otherwise miss out on their entitlements if the employer closed down. For more information contact the General Employee Entitlements and Redundancy Scheme. (The Where can I get more help? section of this booklet provides contact details.)

Redundancy

If you lose your job because the job disappears permanently, according to the law you are considered to be redundant. This may happen due to changing operational requirements, the introduction of new technology, economic downturns, company mergers, take-overs or restructuring. Before making you redundant, the employer should follow any consultation requirements in your award or agreement. If possible and reasonable your employer should redeploy you to another position with the employer or a related company. If you believe that the redundancy is not genuine, for example if the position still exists, or if you were not redeployed and reasonably could have been, or if the consultation requirements in your award or agreement have not been followed, you may be able to make a claim for unfair dismissal.

In addition to the employer giving you notice or pay in lieu of notice, you may also be entitled to severance pay. This is to compensate you for the loss of benefits (such as accrued long service leave) and for the inconvenience and hardship caused by the loss of employment. You should check your award or agreement for a clause on redundancy payments, including restrictions on when those payments apply. For those not covered by any such clause, there is an entitlement to redundancy pay under the National Employment Standards. This entitlement applies to all employees who have been employed for at least one year, unless they are employed by a small business with 15 or less staff. In general, casuals, employees on fixed term contracts and employees on training contracts are not entitled to redundancy pay.

However, you should note that unless you had an entitlement to redundancy pay under an award, agreement or contract of employment as at 31 December 2009, only your service with your employer from 1 January 2010 is counted towards your National Employment Standards (NES) redundancy entitlement.

You may not be entitled to redundancy pay if you are moving from one employer to another in a transfer of business situation (for example, your employer's business has been bought by another business and you are going to work for the purchasing business).

Termination entitlements under the National Employment Standards:

If your employment is terminated, your employer must follow due process. You are entitled to:

- a valid reason for the dismissal;
- a fair and transparent process leading up to the dismissal;
- written notice of the date of termination (unless you are a casual);
- wages due at the time of dismissal;
- a separation certificate (if your employer refuses to provide one, contact Centrelink who can obtain one);
- request to have a support person present at discussions regarding the dismissal, which your employer should not unreasonably deny.

Outstanding payments

As well as the entitlements above, if your employment is terminated you are entitled to:

- payment for annual leave not taken;
- redundancy entitlements, if applicable;
- written notice or payment in lieu of notice (see below); and
- depending on how long you have worked with your employer, and depending on the circumstances of your termination, you may be entitled to payment for long service leave not taken or pro-rata long service leave (unless, in some cases, if you were dismissed for serious misconduct).

Period of continuous service	Redundancy entitlement
at least 1 year, but less than 2 years	4 weeks
at least 2 years, but less than 3 years	6 weeks
at least 3 years, but less than 4 years	7 weeks
at least 4 years, but less than 5 years	8 weeks
at least 5 years, but less than 6 years	10 weeks
at least 6 years, but less than 7 years	11 weeks
at least 7 years, but less than 8 years	13 weeks
at least 8 years, but less than 9 years	14 weeks
at least 9 years, but less than 10 years	16 weeks
at least 10 years	12 weeks

If you are not paid your correct entitlements and your employer will not agree to pay them, you can make a complaint to the Fair Work Ombudsman (FWO).

If you are to be dismissed (other than for serious and wilful misconduct), your employer must give you the period of notice required by your award or agreement, or pay you the equivalent in lieu of notice. The amount of notice required depends on how many years of continuous service and any award or agreement provisions. If you were absent from work, on leave, injury, or for any other approved reason, your continuity of service should not be affected. If you are a casual employee check with FWO or your Union if you are a member to see how much notice you are entitled to. If there is no award or agreement fixing minimum periods of notice, then the following periods apply.

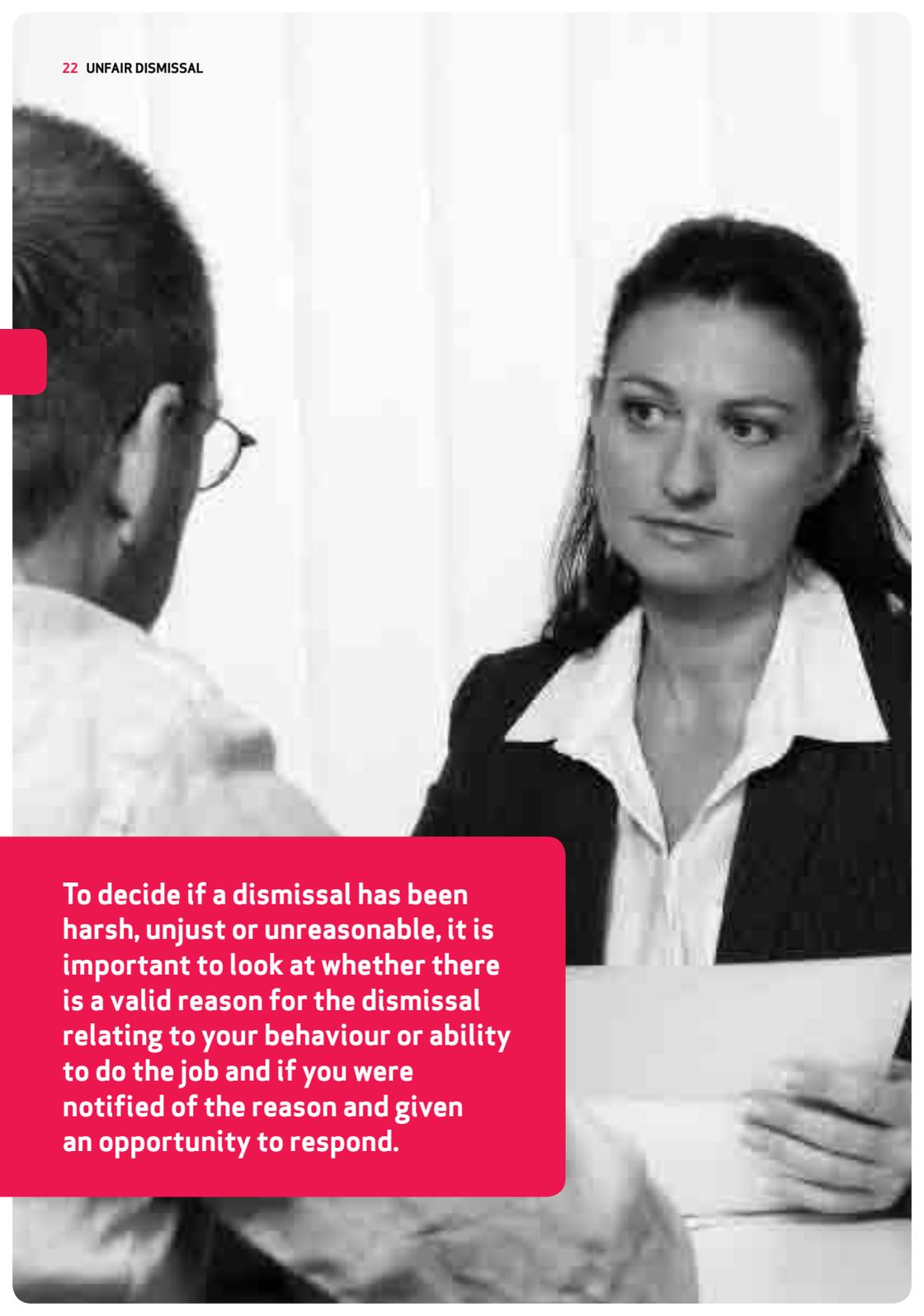
Years of service	Minimum period of notice
Up to one year	1 week
One to three years	2 weeks
Three to five years	3 weeks
Over five years	4 weeks

Employees over 45 years of age with at least two years continuous service must be given an extra week of notice. Some awards and employment contracts contain longer notice periods. If you are unsure, contact the FWO.

If your job was terminated and you did not receive notice, or your pay in lieu of notice, then you are eligible to lodge a complaint with the FWO. If you are unsure, seek further advice. Time limits apply for lodging complaints so don't delay. (The Where can I get more help? section of this booklet provides contact details.)

Trainees and Apprentices

The employment of trainees and apprentices is regulated by the Training and Skills Development Act 2003. A traineeship or apprenticeship can only be terminated if the termination is approved by the Training and Skills Commission. In most cases approval requires the agreement of the employer and the trainee/apprentice. An employer or trainee/apprentice can apply to the Industrial Relations Commission for termination of a contract of training, or for a resolution if they wish to dispute the termination of a contract of training. Please note: Apprentices and Trainees are not automatically excluded from notice of termination by the NES because of the limited duration of their training agreement. Notice of termination may depend on the terms of the employment contract. Care needs to be taken to distinguish between the training agreement and the contract of employment.



To decide if a dismissal has been harsh, unjust or unreasonable, it is important to look at whether there is a valid reason for the dismissal relating to your behaviour or ability to do the job and if you were notified of the reason and given an opportunity to respond.

UNFAIR DISMISSAL

What is an unfair dismissal?

Your employer should not dismiss you without good reason. Unfair dismissal is when you are sacked in a way that is considered to be harsh, unjust or unreasonable, such as being sacked without reason or warning, or for a reason that seems false or unfair, or the dismissal is not a case of genuine redundancy.

To decide if a dismissal has been harsh, unjust or unreasonable, it is important to look at whether there is a valid reason for the dismissal relating to your behaviour or ability to do the job and if you were notified of the reason and given an opportunity to respond.

It is not the case that an employee must be given three warnings before being dismissed. However, an employer must give an employee fair and reasonable warning and an opportunity to improve.

What is not unfair dismissal?

Unfair dismissal does not include a person employed under a contract or for a particular task if their employment was terminated at the end of the contract or completion of the task. Seasonal and casual workers are not eligible unless the casual work was regular and systematic and had a reasonable expectation that their employment would continue.

Businesses may dismiss staff if they need to make a genuine redundancy but employees should be consulted about a proposed redundancy and if possible, should be offered another job in the same or associated business.

Who can apply for unfair dismissal under the Fair Work Act 2009?

Workers must be covered by the national workplace relations system (almost all employees other than state and local government employees) and have served at least 6 months before they can challenge a dismissal as unfair. If you work for a small business, then you have to have been employed for at least 12 months before you can claim for unfair dismissal. A small business is one that employs less than 15 people. As well, you have to be covered by an award or agreement or be earning less than \$123,300* a year (as at 1 July 2012).

How to apply?

Don't delay! If you think you may have a claim, you should:

- Get legal advice or assistance from your Union (if you are a member) as soon as possible
- Lodge your claim, as unfair dismissal claims must be lodged with the Fair Work Commission (FWC) within 21 days of the dismissal.

A late application may be accepted in some circumstances. Any late application must include reasons as to why it would be unfair for FWC not to accept the application.

You should complete a Form F2 – Application for Unfair Dismissal Remedy, which is available from the FWC website (www.fwc.gov.au), or from the FWC office in Adelaide. Applications can be submitted to FWC a number of ways, including in person, by telephone, by facsimile, by post or online through electronic lodgement on the FWC website. It costs \$64.20* to lodge the application but this can be waived in cases of serious financial hardship. To apply for FWC to waive the fee, complete and attach the form Application – waiver of application fee to your application.



At the Conciliation Conference, you can tell the conciliator why you think your dismissal was unfair, and hear what your employer has to say about it. The conciliator may recommend ways of settling the matter and say what could happen if it went to a formal hearing. Most applications are settled by agreement at the conciliation stage and do not need to go further. Unlike a hearing in court, you cannot be ordered to do something at the Conciliation Conference.

If a resolution can't be reached, a formal FWC hearing will be held. If the FWC finds that the dismissal was unfair, your employer can be ordered to either:

- reinstate you (give you back your job), or
- compensate you for up to 26 weeks pay (up to a maximum amount of \$61,650*)

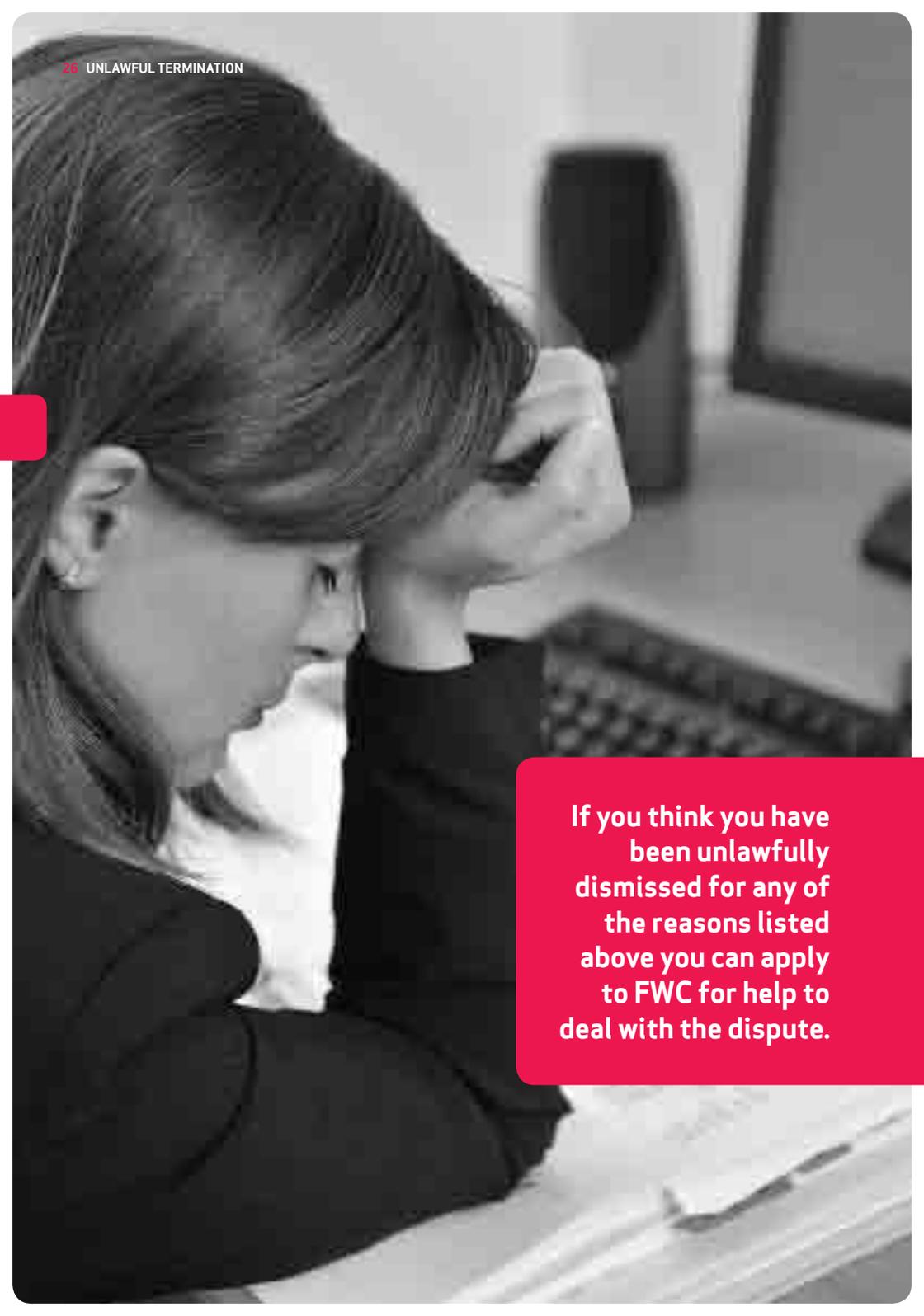
What happens next?

After the relevant documents have been lodged, the FWC can make initial inquiries and discuss the issues with the employer and you. If your claim is accepted, your matter will first be listed for a telephone conference. When you apply, the FWC will check the application to see if it's complete and valid. The FWC will send a copy to your employer.

Usually, a conciliation conference by telephone is then arranged, to help both sides to resolve the matter by agreement. In general, unfair dismissal cases and discussions in conciliation conferences are confidential. During conciliation, both you and your employer have a chance to explain your version of events. It is important to be prepared for the conference.



Businesses may dismiss staff if they need to make a genuine redundancy but employees should be consulted about a proposed redundancy and if possible, should be offered another job in the same or associated business.



If you think you have been unlawfully dismissed for any of the reasons listed above you can apply to FWC for help to deal with the dispute.

UNLAWFUL TERMINATION

Unlawful termination is when you are sacked based on discrimination of race, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

It also constitutes unlawful termination if you are sacked because of a temporary absence from work due to illness or injury, Union membership or non-membership, participation in Union activities outside working hours or, with the employer's consent, during working hours, being an employees' representative, taking parental, maternity or community leave, or for making a complaint or participating in proceedings against your employer.

If you think you have been unlawfully dismissed for any of the reasons listed above you can apply to FWC for help to deal with the dispute. You have 21 days within the date of the unlawful termination to make a general protections dismissal application to the FWC. Although the FWC may accept late applications in limited circumstances. You should complete Form F8 - Application for the FWC to deal with a General Protections Dispute.

An employee who has made a claim or complaint under another law cannot also make an unlawful termination application. For example, if you have made a complaint about your dismissal to the Australian Human Rights Commission, you cannot also make an unlawful termination application alleging discrimination. Likewise, you cannot make a complaint to the Australian Human Rights Commission on the same grounds as the unlawful termination claim. You should seek advice if your claim relates to more than one area of law.

If you have experienced discrimination during the course of your employment, call the Fair Work Infoline on 13 13 94 to seek advice about lodging a complaint for adverse action with the Fair Work Ombudsman (FWO). Forms can be lodged at the FWO's office in Adelaide, online (www.fairwork.gov.au), by fax or by post.

*Please note these amounts are subject to change. You should check the amount prior to lodging your claim.



Some types of leave are guaranteed to all employees under the National Employment Standards (NES). For others you will need to check what you are entitled to under your award, agreement, contract or relevant State legislation.

WHAT LEAVE CAN I TAKE?

There are many different types of leave that you can take from work. Some types of leave are paid and some are unpaid. Some types of leave are only available to permanent employees, others are available to casual employees. Some types of leave are guaranteed to all employees under the National Employment Standards (NES). For others you will need to check what you are entitled to under your award, agreement, contract or relevant State legislation.

Your award, agreement or contract may supplement your entitlement to leave under the NES, as long as this does not disadvantage employees. For example, your agreement could allow you to take twice the annual leave required by the NES but at half the rate of pay. The NES provides for a minimum amount of leave. This means that you may be entitled to additional leave under your award, agreement or contract.

Annual leave

Under the NES, permanent full-time workers are entitled to four weeks of paid annual leave each year, and permanent part-time workers are entitled to four weeks on a pro-rata basis.

Some shift workers are entitled to one extra week of annual leave each year, provided the business operates shifts 24 hours a day, seven days a week, and the employee regularly works rostered shifts on Sundays and public holidays. Casual employees are not entitled to annual leave under the NES.

Your employer cannot unreasonably refuse your request for annual leave. If your award or agreement provides for it, then your employer may be able to direct you to take annual leave, but only if this is reasonable, for example you may have accrued excessive annual leave, or the business may close during an annual Christmas shutdown.

Annual leave accrues progressively and is cumulative. When your employment is terminated you are entitled to be paid out any untaken annual leave.

Cashing out annual leave

You are only entitled to cash out your annual leave if your agreement or award allows this. Many awards and agreements do not have any provisions to cash out annual leave.

There are many different types of leave that you can take from work. Some types of leave are paid and some are unpaid.

Where an award or agreement allows you to cash out annual leave, you still need to have at least four weeks leave remaining. You have to request "cashing out" in writing and your employer must also reply in writing. It is against the law for your employer to influence or pressure you to cash out your annual leave.

Leave loading

Annual leave loading is an additional payment (usually 17.5%) on top of your ordinary pay while you are on leave. Leave loading is not a right under the NES but is covered by many awards, agreements and individual employment contracts. If you are entitled to leave loading in your award or agreement, then this should also be paid out on any untaken annual leave on termination.



Personal/Carer's and compassionate leave

Under the NES, all permanent employees are entitled to:

- 10 days of paid personal/carer's leave per year
- a further two days of unpaid carer's leave per occasion if all paid leave has been used up; and
- two days of paid compassionate leave per occasion.

Under the NES, casual employees are entitled to:

- two days of unpaid carer's leave per occasion; and
- two days of unpaid compassionate leave per occasion.

Personal/carer's leave can be taken if:

- You are not fit to work because of personal illness or injury, or
- You need to provide care or support for a member of your immediate family or household due to personal illness or injury, or an unexpected emergency. The definition of immediate family includes your spouse, de facto partner, child, parent, grandparent, grandchild or sibling, and your spouse or de facto partner's child, parent, grandparent, grandchild or sibling, or any other member of your household.

Compassionate leave can be taken if a member of your immediate family or household dies or has an illness or injury that poses a serious threat to their life.

For permanent employees, leave accrues progressively and is cumulative. If you are on annual leave and a public holiday occurs or you become ill and would, if not on annual leave, be entitled to take sick leave, then these days will not count as annual leave. Instead, they will be taken as a public holiday or sick leave.

You cannot take or accrue any paid or unpaid leave (except parental leave) while on worker's compensation in South Australia.

Cashing out personal/carer's leave

You can only cash out personal/carer's leave if a term in your agreement or award allows this. Most awards and agreements do not have any provisions to cash out personal leave. If your award or agreement allows, you can request to cash out personal/carer's leave entitlements, as long as a minimum balance of 15 days leave is available after cashing out. Your request and your employer's response must be in writing. It is unlawful for an employer to influence or pressure you to make you cash out your personal leave.

Your responsibilities

If you need to take personal/ carer's leave you have to notify your employer as soon as reasonably practicable, and should let them know how long you expect to be on leave for. Your employer may ask you to provide evidence (e.g. a medical certificate or a statutory declaration). Your employer can also ask for evidence for compassionate leave. Your award or agreement may also contain requirements about the evidence you need to give.

Community service leave

You can take unpaid leave to undertake an eligible community service activity such as jury service or voluntary emergency management. Your employer must provide permanent employees with makeup pay for jury duty for up to 10 days. You must give notice as soon as possible, and your employer may require evidence.

Long service leave

In South Australia, if you have worked 10 years with the same employer, you are entitled to long service leave. This means that you receive 13 weeks of leave on full pay. For each year after that you are entitled to 1.3 weeks. So, if you have worked for 12 years you are entitled to 15.6 weeks of leave. If you leave your employment after seven years, you may be entitled to pro-rata long service leave.

Casual employees are also entitled to long service leave if they have worked continuously with their employer.

An employee who has worked for more than 10 years may 'cash out' either part or all of his/her accrued long service leave. 'Cashing out' long service leave can be done only through a written and signed agreement between the employer and the employee. Agreements also can be made to cover deferring long service leave, granting long service leave on less than 60 days notice and taking long service leave in anticipation of the entitlement becoming due.

Public holidays

Permanent employees are entitled to be absent on public holidays without loss of pay. Your employer may make a reasonable request for you to work on a public holiday. However, an employee may refuse to work on a public holiday if they have reasonable grounds, or if the request is unreasonable.

Other forms of leave

Under your agreement, award or contract you may be entitled to other forms of leave (paid or unpaid) as well as those discussed above. These may include leave without pay, Union training leave, study leave, cultural leave, and even moving leave. Aboriginal and Torres Strait Islander people

working under certain awards or agreements may be entitled to additional leave, with or without pay, to participate in ceremonial activities and cultural obligations. You should check your conditions carefully. You may also be able to negotiate additional leave entitlements with your employer. Be sure to put any agreement in writing.

Discrimination and Adverse Action

Under the Fair Work Act 2009, it is against the law for your employer (or potential employer) to take or threaten to take "adverse action" against you because you have a workplace right (such as the right to take annual leave) or because you exercise a workplace right (e.g. you take parental leave). It is also against the law for your employer to take or threaten to take 'adverse action' against you because you are pregnant, breastfeeding, or you have family or carer's responsibilities. Adverse action includes refusing to employ you, sacking you, denying you access to training or promotions, demoting you, and changing your hours or status.

It is unlawful to be dismissed because of a temporary absence due to personal ill health or injury. A temporary absence means an absence on unpaid sick leave of less than three months in total in any 12 month period (time spent on paid sick leave or worker's compensation does not

count). You must have informed your employer of your absence through, for example, a medical certificate which indicates you were unfit for work on the relevant days due to illness.

What is parental leave?

Parental leave is an entitlement under the Fair Work Act 2009 for employees who have or will have responsibility for the care of a child. Under the National Employment Standards (NES), parental leave is taken on the birth of a child or the adoption of a child under 16 (the child may be your child or your partner's child). Note that 'partner' includes a spouse, a former spouse, a de facto partner and a same sex partner. Parental leave covers maternity leave for women and paternity leave for men although the terms 'maternity leave' and paternity leave' are no longer used in the federal legislation.

Who is entitled to parental leave?

Employees who have completed at least 12 months continuous service with their employer on a permanent full-time or part-time basis are entitled to parental leave. Casual employees are not entitled to parental leave unless they have worked regularly and systematically with at least 12 months continuous service and have a reasonable expectation of ongoing work.

Each parent can take a maximum of 52 weeks of unpaid leave, unless one parent requests an extension.

I just found out I'm pregnant, do I have to tell my boss?

Many women don't wish to tell anyone about their pregnancy until after the first trimester, or even later. You are not obliged to tell your employer that you are pregnant until 10 weeks before your expected due date.

My pregnancy means I can't keep doing my job, what will happen to me?

Employers have a legal responsibility under occupational health and safety laws to provide all employees with a safe and healthy workplace. They also have a responsibility under anti-discrimination legislation and the Fair Work Act 2009 not to disadvantage or mistreat an employee because of pregnancy.

Your employer should perform a risk assessment to ensure that the work you do and the way you do it is safe for you while you are pregnant. They may need to make alternative equipment available to you, or temporarily adjust the duties you perform. SafeWork SA can assist with information regarding undertaking a risk assessment. Your doctor can assist with information about what work is safe and appropriate for you to perform while pregnant.

If you are pregnant and your job poses a risk to your health or the health of your baby, you have the right to be transferred to a safe job with the same pay and conditions. You need to provide a medical certificate stating that you are fit to work but are unable to continue in your present position. If a transfer is not reasonably practical (for example, because appropriate and safe work is not available), you are entitled to take paid leave for the period you can't continue in your position (as stated in the medical certificate). This paid leave is in addition to your normal leave entitlements, such as personal leave and annual leave. This leave does not reduce your 12 months parental leave entitlement. Note that you can only be transferred to a safe job if you are entitled to parental leave (see below) and you have notified your employer that you will be taking parental leave.

What if I need time off while I am pregnant and still working?

Generally, you should be able to access your paid personal leave (often called sick leave) to attend antenatal appointments or if you are unwell during your pregnancy. If you are too unwell to work and have no paid personal leave available, or don't want to take your paid personal leave, you are able to apply for unpaid 'special maternity leave'.

Special maternity leave can be taken by a female employee for a pregnancy related illness, or to recover from a miscarriage that occurs up to 28 weeks before the expected date of birth, or in the event of a stillbirth. You can take as much special maternity leave as your doctor recommends in a medical certificate. You must be eligible for parental leave to be able to take special maternity leave. Note that the amount of 'special maternity leave' that you take is deducted from the period of parental leave available once your baby is born.

When can I start parental leave?

If you are pregnant, your leave may start up to six weeks before your expected due date, but no later than the date of birth. For adoption leave, the leave must start on the day of placement of the child.

If you want to stay at work within six weeks before the expected date of birth, your employer may request a medical certificate to state that you are fit to work.

What if I am not eligible for parental leave?

If you have not been employed by your current employer for at least 12 months at the time you will commence parental leave, then you are not eligible for parental leave under the Fair Work Act 2009.



However, you are protected by the Sex Discrimination Act 1984 (Cth), the Equal Opportunity Act 1984 (SA) and the Fair Work Act 2009 (Cth), all of which prohibit employers from discriminating against an employee due to their pregnancy. These protections effectively mean that while you may not be eligible for parental leave, your employer has a responsibility to try and accommodate your needs arising from pregnancy and parenthood. For example, your employer may negotiate a reasonable alternative to you taking parental leave under the Fair Work Act 2009, such as allowing you to use any accrued annual or long service leave and/or offering you leave without pay.

Can my partner and I take parental leave at the same time?

Under the NES, if you are both employed you can take three weeks unpaid parental leave at the same time, either immediately after the birth or placement of a child or by agreement with the employer, at any time during an extended period starting before the birth and ending no later than six weeks after the birth or placement. These three weeks count towards the total 12 month entitlement.

Reducing or extending parental leave

You may find that you are not ready or able to return to your old position when it is time to go back to work after parental leave. If you have arranged to take less than 12 months parental leave, then you are entitled to extend your return date once by giving written notice to your employer at least four weeks before your original return date, as long as your new return date will still fall within the 12 months immediately after the birth or adoption.

If you wish to extend your leave again (within the 12 months), or if you wish to return to work earlier than arranged, your employer can agree but has the right to refuse your request.

If you, or your partner, has taken 12 months parental leave and wishes to extend, one of you can request an extension of leave to a maximum of 24 months, reduced by the amount of any leave taken by your partner. So, if you or your partner have used your full 12 months entitlement, then you or your partner have the right to request a further period of up to 12 months unpaid parental leave. You must make the request in writing at least four weeks before the end of the initial period of leave.

Your employer must respond in writing within 21 days stating whether they grant or refuse the request. Employers may refuse the request only on reasonable business grounds and must include the reasons for the refusal in the written response. While reasonable business grounds are not defined in the NES, they may include the effect on the workplace (e.g. the impact on finances, efficiency, productivity or customer service), the inability to manage the workload among existing staff or the inability to recruit a replacement employee.

Can I take other types of leave as well as parental leave?

You can also take other forms of leave, such as annual leave or long service leave, at this time. However, your entitlement to 12 months of unpaid parental leave will be reduced by the amount of any other form of leave you take. For example, if you take a month of annual leave, you will have 11 months of unpaid parental leave remaining.

What notice do I have to give?

You must give your employer at least 10 weeks written notice before starting your leave, unless this is not possible. The notice must specify the intended start and end dates of the leave, and you must confirm the intended start and end dates of the leave (or advise of any changes) at least four weeks before the intended start date, unless this is not possible. An employer may require evidence of the due date or adoption placement date.

Pre-Adoption leave

Adopting parents can take up to two days of unpaid pre-adoption leave for adoption interviews or exams (unless their employer requires them to take other paid leave they have available, such as annual leave). You do not need to meet service requirements to access this leave. You must give notice of the intention to take pre-adoption leave and your employer can require reasonable evidence.

The Australian Government also provides paid parental leave through its funded Paid Parental Leave scheme.

Paid parental leave

Many organisations provide paid parental leave as a way of valuing, supporting and retaining their staff. You should check your award, agreement, contract or letter of offer to see if you may be eligible for paid parental leave.

The Australian Government also provides paid parental leave through its funded Paid Parental Leave scheme.

What is the Paid Parental Leave scheme?

The Paid Parental Leave scheme is an Australian Government funded entitlement for working parents who become the primary carer of a newborn or newly adopted child.

Who is entitled to Parental Leave Pay?

- Working parents, including full-time, part-time, casual, contract and self-employed workers may be eligible for Parental Leave Pay if they meet the eligibility criteria.
- Your child must have been born or adopted on or after 1 January 2011 to be eligible for Parental Leave Pay.
- The birth mother or the initial primary carer of an adopted child must make the claim for Parental Leave Pay, unless there are exceptional circumstances.

- To be eligible for the full 18 weeks of Parental Leave Pay, you should nominate a start date for your pay that is within 34 weeks of the birth or adoption of your child.
- Lodge your claim with the Family Assistance Office early.

How will I be paid under the Paid Parental Leave Scheme?

From 1 July 2011, your employer is responsible for providing your Parental Leave Pay if:

- your child is born on or after 1 July 2011,
- you have worked for your employer for at least 12 months prior to the expected date of birth or adoption of your child,
- you are receiving at least eight weeks of Parental Leave Pay, and
- you will continue to be employed by them during your Paid Parental Leave period

If this does not apply to your situation, you and your employer can still agree that your employer will provide your Parental Leave Pay after 1 July 2011, provided you are eligible.

How much will I be paid under the Paid Parental Leave Scheme?

Eligible working parents will receive Parental Leave Pay at the minimum wage (\$589.30 as at 1 July 2011) per week for a maximum period of 18 weeks. This pay is taxable.

If your employer is providing your Parental Leave Pay, you will be able to access other paid leave such as maternity leave, however this may mean you will be taxed at a higher rate.

You may arrange for other deductions to be made from your Parental Leave Pay. You may salary sacrifice some or all of your Parental Leave Pay. For example, you may make voluntary contributions to superannuation. You must agree to these arrangements with your employer as you do with wages. Your employer will not be required to make superannuation contributions on your Parental Leave Pay.

The leave can be taken in conjunction with, or in addition to, employer-provided paid parental leave, and other employer-provided leave entitlements such as annual leave. If you meet the eligibility criteria, you can choose between the scheme or the Baby Bonus and other family assistance.

Employers who currently provide paid parental leave through an agreement cannot withdraw that entitlement for the life of the agreement. However, existing leave schemes could be modified in the bargaining process for a new agreement.

Does taking parental leave affect my continuity of service?

Taking parental leave will not break your continuity of service, however unpaid parental leave is not counted when calculating your period of service for the purposes of long service leave and other entitlements. You will only accrue personal leave and annual leave on paid parental leave, not unpaid parental leave.

What if I get the sack while I am pregnant or on parental leave?

It is unlawful for your employer to dismiss you because you are pregnant or on parental leave. Your employer should not downgrade your work or refuse you a job solely because you are pregnant, have been on parental leave or because you have a young child.

If you are dismissed or pressured to resign while on parental leave or when you return from leave, or if your job is changed while you are on parental leave, this may be an adverse action and/or an unlawful dismissal. See the sections on Discrimination, Adverse Action and Unlawful Termination for more information.

Returning to work

Under the Fair Work Act 2009, if your employer makes a decision about your job while you are on parental leave, and that decision will have a significant effect on the pay, status or location of your position, then they must take all reasonable steps to give you information about the changes and an opportunity to discuss them.

When returning to work from parental leave you have the right to return to your old position or to a new position if you have been promoted or agreed to accept a new position. If you had been performing light duties or reduced hours as a result of your pregnancy prior to commencing parental leave, you are entitled to have your original position back. If your old job no longer exists (meaning no other employee is performing your old job either) and you are qualified and able to work in another position, then you are entitled to work in another position.

When there is more than one appropriate position, you are entitled to the position nearest in status and pay to your former position. Some women will find that for many reasons they are not able to, or do not wish to, return to their original position at the end of their parental leave. If this happens to you and you wish to maintain your employment relationship, you will need to negotiate with your employer to find an alternative

that works for everyone. Part-time work may be available upon your return. You should let your employer know early of your interest in working part-time and commence negotiations as soon as possible.

If you do not return to your position at the end of your period of parental leave, you will lose your entitlement under the Fair Work Act 2009 to have your old position back when you are ready to return.

What if I am discriminated against or unfairly treated?

It is illegal to discriminate against pregnant and breastfeeding women in the workplace. It is also illegal to discriminate against women on the ground of 'potential pregnancy' (i.e. women of child bearing age, who may be likely or perceived to be likely, to become pregnant). So, if you are pregnant, potentially pregnant, or breastfeeding, this cannot be used as a reason to refuse to employ you, transfer you (without a valid medical or safety reason), demote you, change your hours or status, deny you access to training and other opportunities, or dismiss you. It is unlawful for employers or potential employers to question you, including when they are interviewing you for a job, about current or future pregnancies.

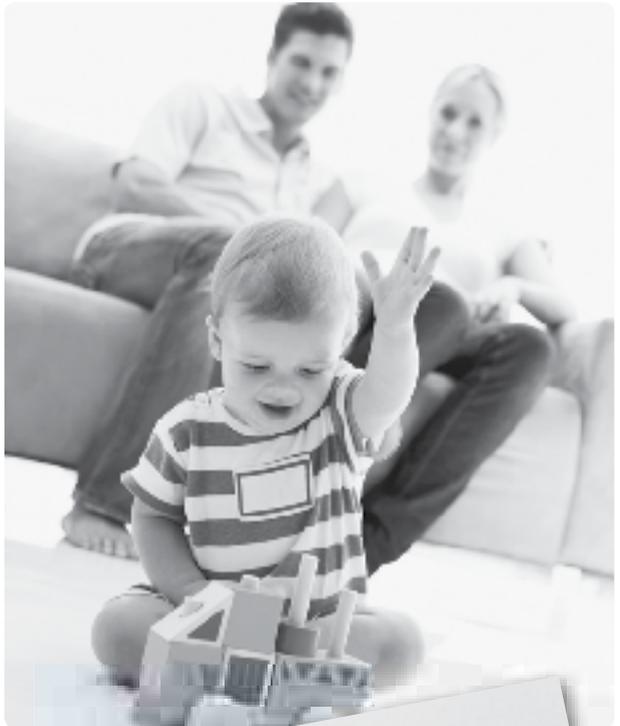
Depending on the circumstances, you may have protection under the General Protections and Unlawful Termination provisions of the Fair Work Act 2009, which make it against the law to dismiss you because of your family responsibilities, as well as protection under anti-discrimination legislation, which require your employer to attempt to accommodate your responsibilities and needs as a parent.

This includes if your employer does not allow you to use your personal leave to care for your children when they are sick, injured, or affected by an unexpected emergency. If you need to use your personal leave to care for a sick child or other family member, it is known as carer's leave and this right is protected by law.

Childcare assistance

Depending on your income you may be eligible for assistance from the government for your childcare fees, if you use a recognised childcare service.

Contact the Families Assistance Office for more information.



If you do not return to your position at the end of your period of parental leave, you will lose your entitlement under the Fair Work Act 2009 to have your old position back when you are ready to return.

There are many ways that your workplace can help you in balancing your work and family commitments including but not limited to allowing you to work part-time.



BALANCING WORK AND LIFE

What is work life balance?

Work life balance describes the relationship between your work and the commitments in the rest of your life and how they impact on one another. Many workers struggle with trying to balance their commitments at work with the many different demands in their private lives. More people now work longer hours, with evening and weekend work and heavier workloads. This impacts on the ability to combine caring, health and social commitments like study, volunteering, sport and recreation. The range of different people now engaged in the workforce, such as working parents and carers, older workers wanting to reduce hours before retirement, and young workers wanting to work more flexible hours, has led to a greater interest in negotiating special agreements to cover balancing life with work commitments.

Negotiating for Work and Life Balance

There are many ways that your workplace can help you in balancing your work and family commitments including but not limited to allowing you to work part-time.

They could also include allowing you to perform some work from home or bringing children to work, providing a breastfeeding friendly workplace, providing assistance with child care, allowing you to access leave over school holidays or at half pay, and salary banking to provide for extra leave. These flexible arrangements may be informal agreements between you and your employer (although it is always best to get such things in writing), part of your workplace policies, or could be part of your award or negotiated and formally written in to your agreement. For many workers negotiating flexible work arrangements can be as important as a pay increase. A range of leave and working hours arrangements can be packaged in a Work and Life Balance clause to be included in an enterprise agreement.

For further information see Negotiating with your Employer, the SafeWork SA website on Work Life Balance www.safework.sa.gov.au, and the Fair Work Ombudsman's Work and Family Best Practice Guide www.fairwork.gov.au/resources/best-practice-guides.

Work life balance initiatives

- Schedule meetings within normal working hours;
- Limit excessive overtime;
- Take annual leave in the year that it is due;
- Allow reasonable personal phone calls;
- Discourage working out of the normal span of hours, except in exceptional circumstances;
- Implement a 'keeping in touch' plan for staff on parental leave;
- Consider leave requests during school holidays;
- Allow working from home, job sharing and part-time work arrangements;
- Negotiate flexible start and finish times;
- Introduce a workplace policy for breastfeeding employees;
- Provide access to childcare information and referral services;
- Provide paid parental leave beyond the government entitlement and options to return to work part-time after having a baby;
- Consider time off for employees to volunteer.

Right to request flexible working arrangements

If you are a parent or have responsibility for the care of a child under school age (or a child with a disability under 18), you have the right under the Fair Work Act 2009 to request a change in working arrangements to assist with the care of your child.

To make this request, you must have 12 months continuous service with the employer, and if you are a casual, you must also have an expectation of ongoing employment on a regular and systematic basis. You must make the request in writing and include what change you are wanting and why. It is a good idea to include any benefits to the employer in your proposal.

Your employer must give you a written response within 21 days, stating whether the request is granted or refused, and if refused, the reasons for this. If not granted, you should be able to clearly understand why your request is rejected. A request can only be refused on reasonable business grounds, such as the effect on the workplace, including the financial impact and the impact on efficiency, productivity and customer service; the inability to organise work among existing staff; and the inability to recruit a replacement employee.

If your request for flexible working arrangements is rejected and you are not satisfied with your employer's reasons then you can go to the Fair Work Commission (FWC) for assistance in whether the employer had reasonable business grounds for refusing the request – however, the FWC can only help you if this is provided for in your enterprise agreement or Award.

Individual flexibility arrangements

Even if you are not eligible under the 'Right to Request' provision of the Fair Work Act 2009, (for example because your child is already at school), you can still negotiate flexible arrangements with your employer.

All modern awards and new enterprise agreements must contain a flexibility term, which allows for individual flexibility arrangements between employers and employees. The flexibility agreement must identify the terms of the award or agreement which can be modified. In modern awards, the terms which may be altered are;

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; and
- leave loading.

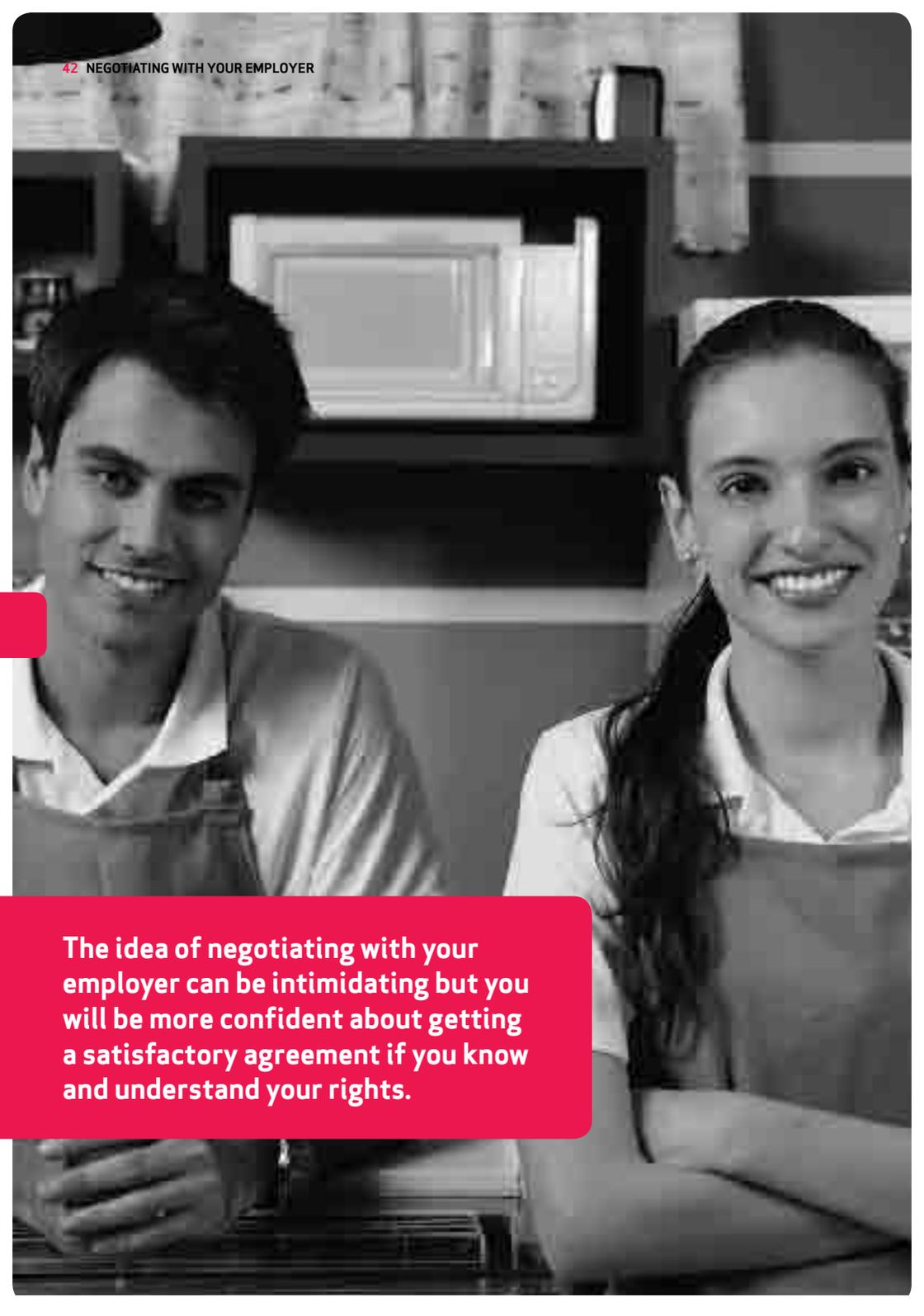
However, enterprise agreements may allow for additional items to be varied so you should check what possibilities are open to you.

You may be able to make a formal request to alter your conditions of employment in a way that benefits you and your family, but doesn't negatively impact on your employer. For example you may negotiate to start and finish earlier so you can take your child to a regular activity, but not be paid any penalty rate that would normally apply to the different working times.

Any agreement made under the flexibility term must leave the employee better off overall than they would be if it wasn't agreed to. The agreement must be in writing and signed by both the employer and employee and a copy must be given to the employee. The agreement must also state how the individual flexibility agreement can be terminated.



All modern awards and new enterprise agreements must contain a flexibility term, which allows for individual flexibility arrangements between employers and employees.



The idea of negotiating with your employer can be intimidating but you will be more confident about getting a satisfactory agreement if you know and understand your rights.

NEGOTIATING WITH YOUR EMPLOYER

Hints and tips for negotiating

- Be clear about what you want to achieve before you start discussions;
- Do some research and get advice about the situation before you negotiate;
- Find a good time to talk to your employer/manager. Make sure that he or she is not too busy and that you won't be interrupted. Make sure that neither of you is exhausted after a long shift;
- Take the time to be calm. If you are angry or upset, it's important that you calm down so you are able to confidently negotiate;
- Bring along evidence or examples to negotiation meetings. If you are asking for something, it's going to be more persuasive if you take along examples to back up your arguments or evidence of why you think you should get what you're seeking;
- Ask for a time frame for a decision. If your employer/manager says they will think about your request and get back to you, ask them to tell you when you can expect an answer. If they do not reply to your request within this time, you may need to ask again;

- Make a written record of the discussion and, if possible, get your employer to sign the record. As part of the negotiations, you may reach agreement with your employer to enter into a new contract of employment or to formally vary your existing contract. You should record the new contract or variation in writing.

My boss wants to talk about an agreement. What is involved?

The idea of negotiating with your employer can be intimidating but you will be more confident about getting a satisfactory agreement if you know and understand your rights. There should be genuine negotiation between employer and employee to work out what is best for the worker and the workplace.

There are specific rules relating to the way in which enterprise agreements are made. These rules include:

- Your right to be represented
- Negotiations or bargaining must be conducted in good faith
- Rules for taking industrial action
- Employees under the age of 18 require the co-signature of a parent or guardian when making an enterprise agreement.

Help and specialist advice is available free of charge. Contact your Union if you are a member, the Working Women's Centre, the Young Workers' Legal Service or the Fair Work Ombudsman. Your Union can act on your behalf in negotiations if you wish.

Should a consultative committee be formed?

Forming a negotiation group or 'consultative committee' is a good way to make sure that all of the employees in your workplace get a chance to be represented in negotiations with management. Members are elected from among the employees to represent the interests of the work group.

What can I negotiate for?

There is no limit to the types of beneficial changes you and your employer can negotiate. However, the agreement should be fair for all employees, including you. Some changes (for example, longer shifts) might suit one group of employees but could be a problem for others. An enterprise agreement must not disadvantage any group of employees, even if they are in the minority.

Some conditions that could be negotiated are:

- Changes to the way work is done so that it is more efficient
- Flexible arrangements for taking leave (for example, taking leave during school holiday periods)
- Changes to your work environment (for example, better lighting, exhaust fans, ergonomic chairs)
- Extra paid carer’s leave to care for a family member
- Paid parental leave that builds on the government entitlement
- Paid leave to attend to personal issues (for example, arising from experiencing domestic violence – See the section on What else do I need to know? Domestic Violence for more information)
- Performance bonuses
- Employee share ownership plans
- Salary packaging
- Increased availability of permanent part-time work
- Assistance with child-care (for example, work-based child care or help in finding appropriate childcare)

- Flexibility of working hours (for example, working the same number of hours currently worked but in a more suitable pattern)
- Including casuals and part-timers in training and access to career paths
- Job-sharing and job rotation.

Your Union (if you are a member) and other agencies can advise you on other possible conditions. (The Where can I get more help? section of this booklet provides contact details for these organisations.)

You have the right to be consulted

- Before the agreement becomes binding by law, your employer and your Union (if involved), must inform you and consult with you about the agreement and its effect on you.
- Usually a vote is held to decide whether to accept the agreement or not. Once approved by the Fair Work Commission, your enterprise agreement is enforceable.
- You should not accept the agreement unless you are sure you know what is contained within it and you agree with it. Ask to see a copy if you are not sure.

- You should be provided with a copy of the proposed agreement. Read it carefully and seek clarification and/or ask for time to think about it and talk to others if you need to.

Remember:

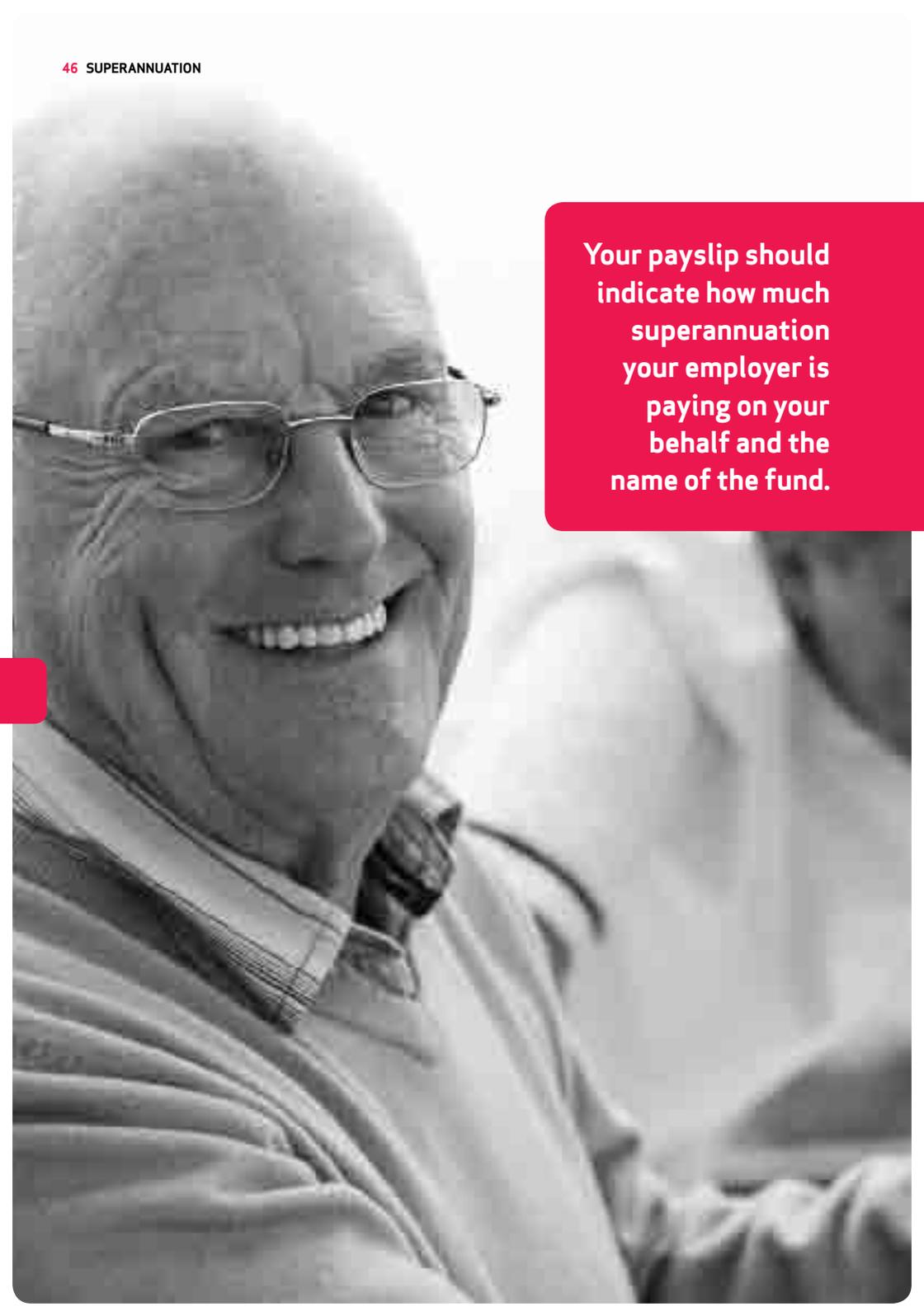
- You have the right to be represented
- Conditions such as your penalty rates or leave loading cannot be reduced without compensatory benefits or trade-offs. The agreement must leave employees better off overall than they would be if the award applied
- People who work on a part-time or casual basis need to be invited to be included in the agreement and to vote on it.

Workplace grievances

Your Union, if you are a member, or staff association may be able to advise you on the best way to resolve a workplace grievance. Before taking action, you should check the dispute resolution procedures contained in your award, agreement or policies, as certain procedures may be required and some types of industrial action may be unlawful.



There is no limit to the types of beneficial changes you and your employer can negotiate. However, the agreement should be fair for all employees, including you.



Your payslip should indicate how much superannuation your employer is paying on your behalf and the name of the fund.

SUPERANNUATION

What is superannuation?

Superannuation is a form of compulsory savings which ensures that employees accumulate funds for their retirement. The Superannuation Guarantee Act currently provides almost all workers at least a nine per cent superannuation contribution from their employer on top of their ordinary pay and the right to determine which fund they contribute to. In some cases, your award or agreement may restrict your choice of superannuation fund.

Employers do not have to pay superannuation for you if you are:

- paid less than \$450 (before tax) per month
- aged under 18 and work no more than 30 hours per week
- aged 70 or over
- paid to do work of a domestic or private nature for 30 hours or less a week.

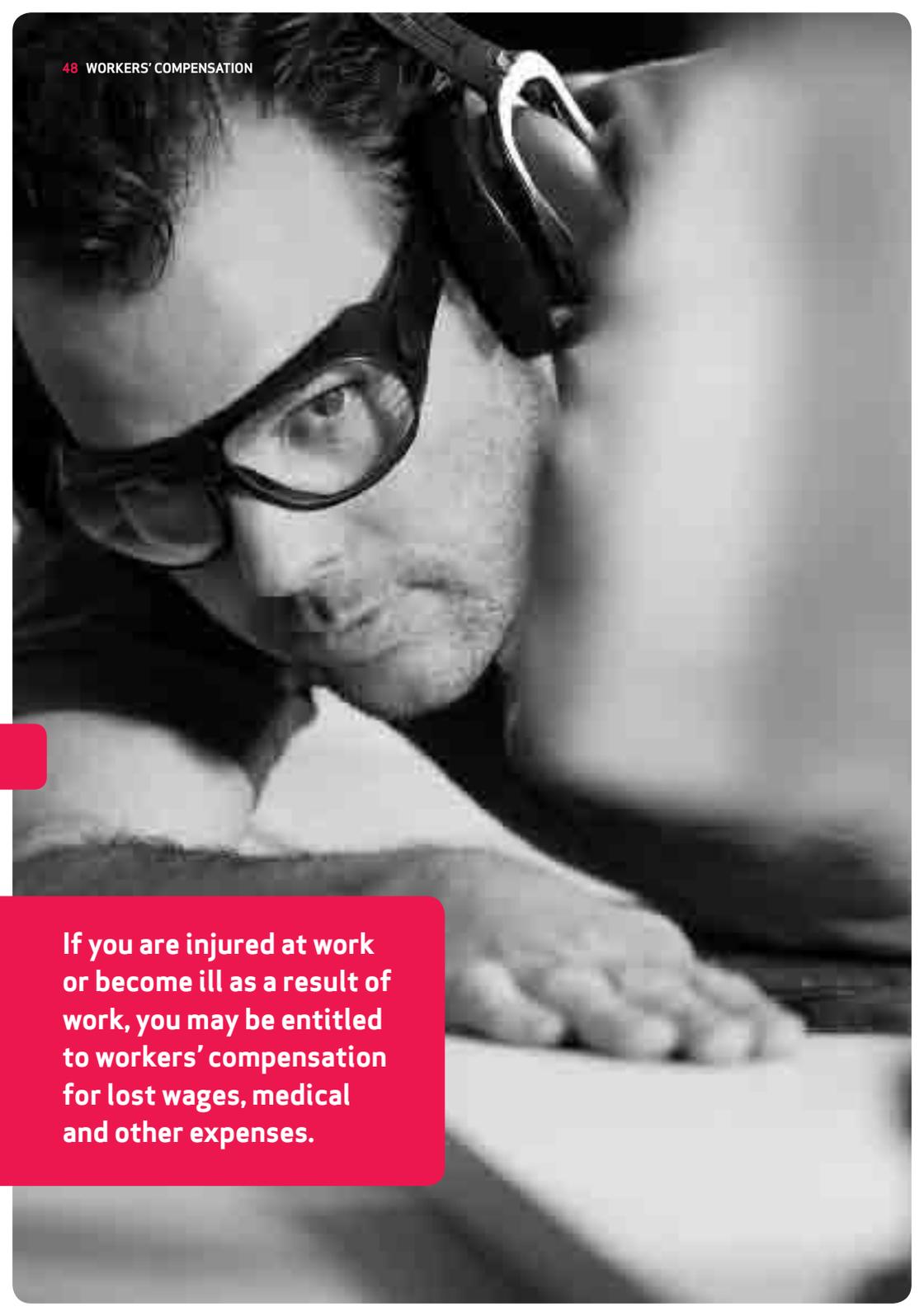
However, you should check your award or agreement as some give people in these categories the right to employer superannuation contributions. Superannuation funds also provide life insurance, and some provide accident and injury insurance as well.

Your payslip should indicate how much superannuation your employer is paying on your behalf and the name of the fund. Every year, the fund into which your superannuation is being paid should send you a letter with details of the amount in your account. Check the amount against your payslips. If your employer is not paying your superannuation into a fund, you should report this to the Australian Taxation Office, which has the power to make the employer pay. If necessary, you can apply to a court to order your employer to pay the outstanding contributions.

What happens to the money?

The money from your employer must be paid into an approved superannuation fund. In general, you cannot withdraw it until you are at least 55 years old and retired. Sometimes you can get early release of your superannuation on compassionate grounds or because you are suffering severe financial hardship. You can boost your superannuation by making your own contributions and you may be eligible for government co-contributions. You might also want to consider a salary sacrifice arrangement to grow your superannuation.

If you've ever changed your name, address or job, you may have more than one superannuation account or even have some lost superannuation. Combining your superannuation into one account will save you fees and makes it easier to keep track of your superannuation. The Australian Taxation Office can help you find lost and unclaimed superannuation and help you to transfer your 'lost' superannuation to another superannuation account. If you have a query about the Superannuation Guarantee, contact the Australian Taxation Office. For other queries, contact your superannuation fund or the Australian Prudential Regulatory Authority.



If you are injured at work or become ill as a result of work, you may be entitled to workers' compensation for lost wages, medical and other expenses.

WORKERS' COMPENSATION

If you are injured at work or become ill as a result of work, you may be entitled to workers' compensation for lost wages, medical and other expenses. Generally you are not entitled to compensation if you are injured travelling to and from work or during your lunch break. Some Unions provide this cover for their members or this may be covered in a workplace agreement.

What should I do if I am injured?

- Report any injury or accident to your employer, supervisor or safety representative as soon as possible and preferably in writing. A report should be made even if the injury is minor and you don't need time off, as the injury may cause problems later on.
- Take the names and addresses of any witnesses.
- Ideally, you should keep your own written record of all dates, costs, etc. and keep copies of any forms or documents relating to your injury.

Who can claim?

- Any employee, casual or part-time, permanent or temporary, irrespective of how long you have worked.
- Apprentices and trainees.

Generally, an 'employee' is someone working under a contract of service for someone else. An employee is subject to directions about what is to be done, how, when and where, with wages paid, tax deducted, and an employee is entitled to benefits such as leave. There are occasions where it is difficult to work out if you are an 'employee'. It is best to lodge a claim if you think you may be entitled to claim.

How do I claim?

If you need time off work or medical treatment, get a WorkCover medical certificate from your doctor and fill in the WorkCover claim form available from:

- Your workplace
- Online at www.workcover.com under the Injury and Claims heading.
- Online at www.employersmutual.com.au

Give the WorkCover claim form and the medical certificate to your employer. If your employer fails to lodge the claim with WorkCover, you should contact WorkCover or Employers Mutual to start the claim process. Employers Mutual is contracted by WorkCover to provide workers rehabilitation and compensation services to injured workers.

What is rehabilitation?

Rehabilitation is extra help to get you back to work or to help you cope at home. It may include services such as help with some home duties, counselling, medical treatment, physiotherapy, occupational therapy or a fitness program. If necessary, it may involve training for a new job and/or assistance in finding a new one.

More tips

- Seek advice before you put in a claim.
- You do not have to resign because you have an injury.
- When you are receiving workers' compensation, in most cases you can't be sacked without 28 days notice.
- If you think you have been sacked or refused a job because of an ongoing disability (and you are still able to do your job safely), this may be discrimination.
- Acceptable medical and other costs may include fees charged by doctors, specialists, chiropractors, physiotherapists, psychologists and various other practitioners, chemist items, the cost of travelling to and from treatment and replacement of damaged personal belongings.

A black and white photograph of a Black man wearing a dark cap and a work shirt, smiling broadly. He is holding a tool with a long wire. The background shows a workshop with metal frames and equipment. A red banner is overlaid at the bottom right.

You have the right to be protected from injury and all other mental and physical health risks whilst at work.

WORKPLACE HEALTH AND SAFETY

Occupational health, safety and welfare laws state that your employer must make sure you have:

- A safe working place.
- Safe work procedures.
- The equipment, training and supervision you need to work safely.

You have the right to be protected from injury and all other mental and physical health risks whilst at work. This includes things that are not so obvious such as good lighting and furniture and being safe from workplace bullying.

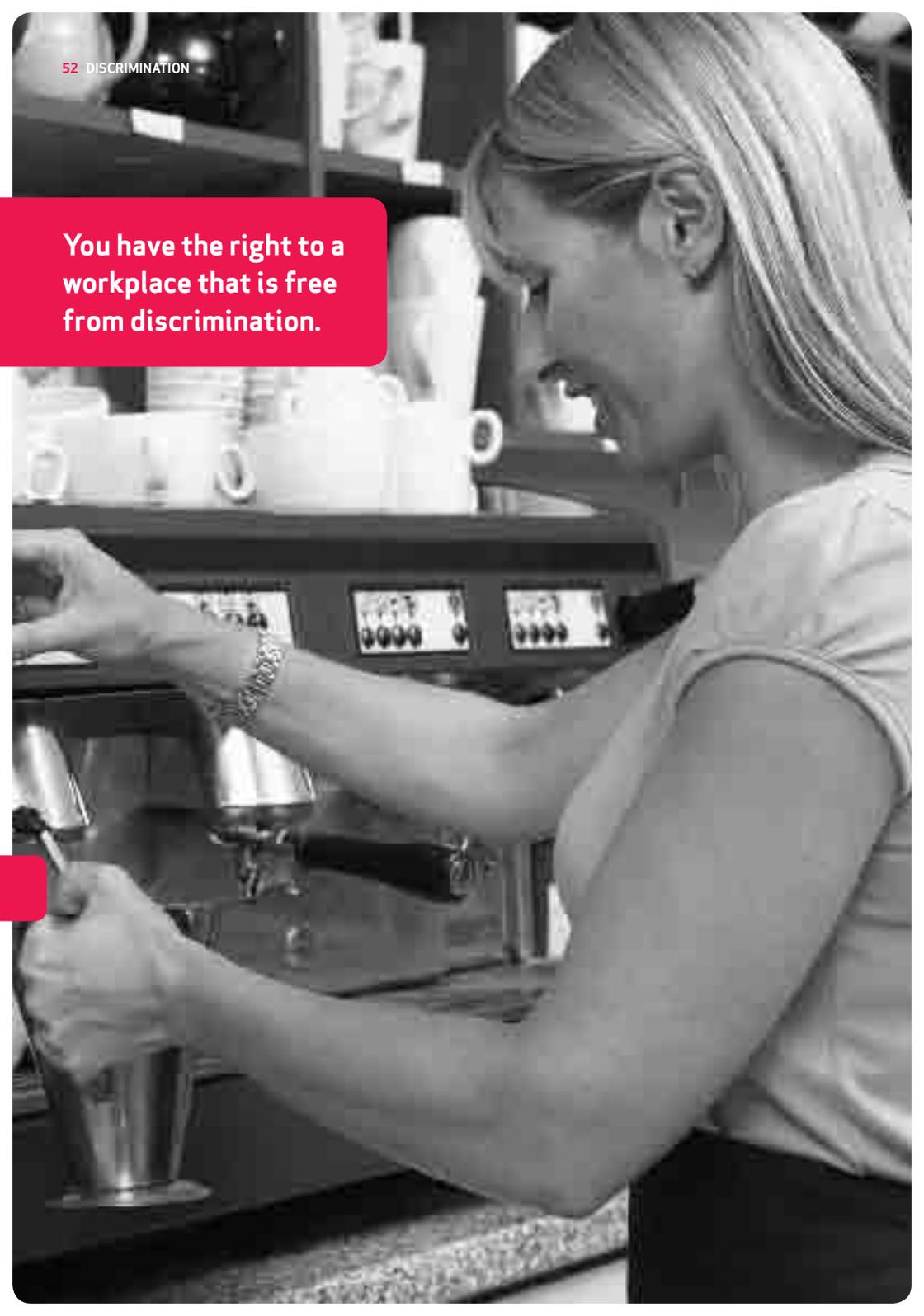
Can I have a say?

Yes. Workplace safety laws provide for the election of health and safety representatives and the establishment of health and safety committees. Health and safety representatives should be trained and allowed time to attend to health and safety issues in the workplace and to represent the interests of the people in their workgroup. If your health and safety representative is unable to resolve the problem, contact SafeWork SA.



If your health and safety representative is unable to resolve the problem, contact SafeWork SA.

You have the right to a workplace that is free from discrimination.



DISCRIMINATION

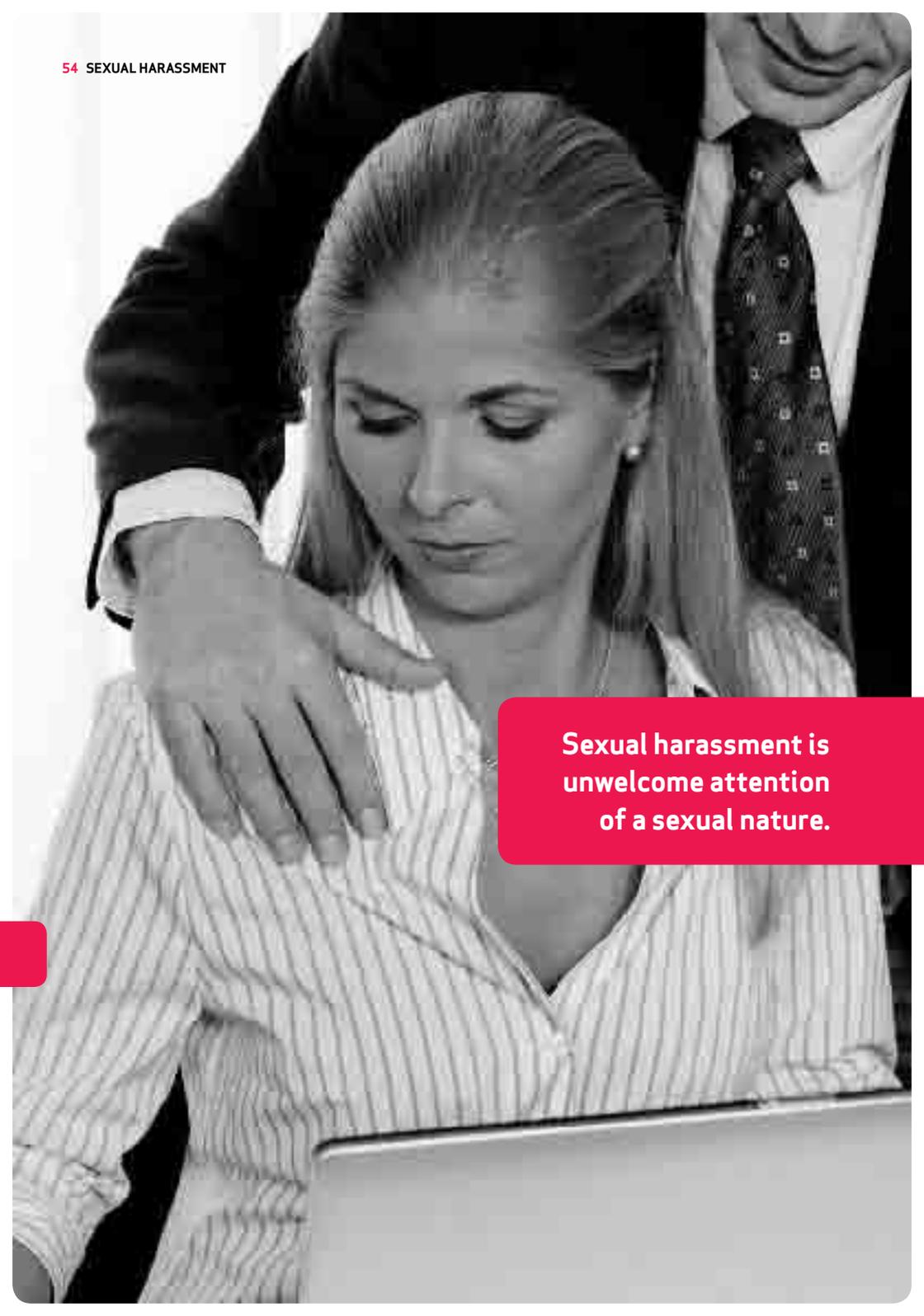
There are federal and state laws about discrimination and equal opportunity, which make it unlawful to be treated unfairly on the basis of race, sex, sexual preference, age, intellectual or physical disability, family responsibilities, pregnancy, marital status, breastfeeding, political opinion, affiliation or activity, trade Union activity, religion, irrelevant medical or criminal records, national extraction or social origin. You have the right to a workplace that is free from discrimination. Discrimination occurs when someone treats a person less favourably than another because of a particular characteristic such as those listed above. Note that the different laws have slightly different grounds for discrimination, so it is best to check to see which law best applies to your situation.

You must be treated fairly when it comes to getting a job, in opportunities for training and promotion, in your working conditions and if you are dismissed. This applies whether you work as a full-time or part-time, casual, or on a fixed term contract.

You have rights

It is against the law to treat you unfairly because you complained or because you supported someone else who acted on those rights. If you have complained to your Union, the Fair Work Ombudsman, the Equal Opportunity Commission (EOC), the Australian Human Rights Commission (AHRC) or anywhere else, then it is illegal for your employer to dismiss you, demote you, discriminate against you, or treat you badly because you complained.

It is against the law to treat you unfairly because you complained or because you supported someone else who acted on those rights.



**Sexual harassment is
unwelcome attention
of a sexual nature.**

SEXUAL HARASSMENT

Sexual harassment is unwelcome attention of a sexual nature.

Behaviour such as touching you, telling smutty jokes in your presence, repeated questions about your personal life or sexual habits, demands for sexual favours or sending offensive pictures by e-mail may be considered sexual harassment. If this kind of behaviour offends you, or makes you feel nervous or humiliated, then you may be being sexually harassed. The behaviour doesn't have to be ongoing to be sexual harassment, it can be a one off incident.

Perpetrators of sexual harassment may consider their behaviour is just 'fun and games', but sexual harassment in the workplace is against the law whatever its degree of seriousness, whether it's the actions of a single individual or a group, or whether it's a boss or a co-worker. You have the right to be treated with respect and you do not have to put up with it. Regardless of where you work, your employer must make sure your workplace is free from sexual harassment.

What can I do?

There are a number of things you can do:

- If it is safe to do so, tell the harasser that you want the behaviour to stop. You can do this in writing but always seek advice before you send anything in writing.
- Talk to others at work, especially others who also may have been harassed. They may be able to support you.
- Complain to your boss or supervisor.
- Tell your harasser's superior if your boss or supervisor is the one harassing you.
- Check if your workplace has a policy for dealing with sexual harassment and/or a complaints procedure that you can follow.
- Keep a written record of what has happened.
- Get advice and perhaps lodge a complaint. You may be able to claim for lost wages, medical expenses and hurt feelings. (The Where can I get more help? section of this booklet provides contact details)

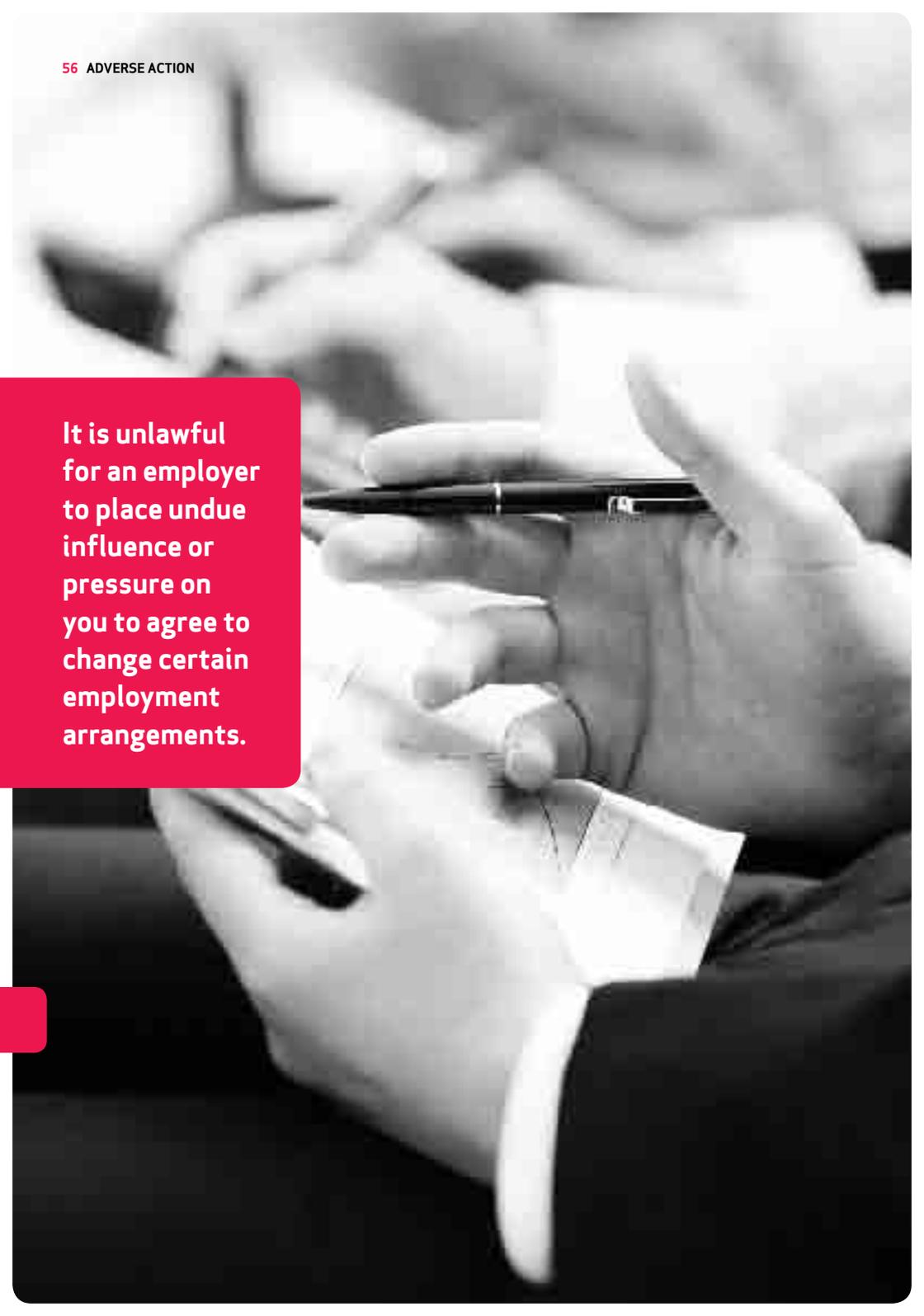
Whatever you choose to do, do it quickly. A time limit of 12 months applies to complaints under state and federal anti-discrimination legislation. Under the Fair Work Act 2009 you have up to six years to lodge a complaint with the Fair Work Ombudsman about discriminatory treatment at work (see the section on Adverse Action for more information).

Don't be discouraged by others who may not believe you or try to make you feel foolish for complaining. You don't have to resign to escape sexual harassment at work. If you do feel like resigning, get advice first.

What if my boss sacks me because I've complained?

If you are sacked because you made a complaint or because you helped someone make a complaint, that may be unlawful termination. You may be entitled to make a general protections claim under the Fair Work Act 2009, or to lodge a complaint under anti-discrimination legislation.

It is unlawful for an employer to place undue influence or pressure on you to agree to change certain employment arrangements.



ADVERSE ACTION

Workplace Rights - General Protections

You have the right to a workplace that is free from discrimination and where you are able to exercise your general workplace rights without fear of reprisal. Under the General Protections provisions of the Fair Work Act 2009 it is unlawful for an employer to threaten to or actually dismiss you, negatively alter your position or treat you differently because:

- You have a workplace right;
- You make an inquiry or complaint in relation to your employment or workplace rights;
- You join the union or participate in lawful activities such as voting on an agreement or taking protected industrial action;
- You perform a representative role in your workplace. This includes occupational health and safety representatives, harassment officers and Union delegates;
- Of your race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

What is an Adverse Action?

It is unlawful for an employer to place undue influence or pressure on you to agree to change certain employment arrangements. For example your employer can not pressure you to sign an Individual Flexibility Arrangement.

Under the Fair Work Act 2009, an employer takes an adverse action against an employee when they:

- dismiss the employee;
- injure them in their employment;
- alter their position to their detriment (e.g. demotion); or
- discriminate between them and other employees.

Some examples of being injured in your employment are having your hours reduced, having responsibility taken away from you, having a leave application refused unreasonably or being offered lesser conditions than a co-worker who does the same job.

It is unlawful for an employer to coerce you to exercise your workplace rights in a particular way. For example your employer cannot pressure you not to take leave to which you are entitled.

In order for the adverse action to be unlawful under the General Protections provision, it has to be taken for a discriminatory reason.

What is a workplace right?

According to the Fair Work Act 2009, a workplace right exists where a person is entitled to a benefit or has a role or responsibility under a workplace law, workplace instrument (such as an award or agreement) or an order made by an industrial body. A workplace right also exists when a person is able to initiate or participate in a process or proceedings under a workplace law or workplace instrument, including making a complaint or inquiry to a person or body to seek compliance with that law or instrument or simply when they make a complaint or inquiry regarding their employment (including their employer). Workplace rights include, for example, taking leave, joining or not joining a Union, making an enquiry about your working conditions or pay or reporting dangerous equipment or practices.

For example, an employer will be in contravention of this provision where an employee is overlooked for promotion, and a substantial reason for the decision is that the employee makes persistent complaints to his or her Union or safety committee about alleged safety breaches.

What kind of discrimination is covered?

The Fair Work Act 2009 specifically prohibits adverse action being taken against an employee or a prospective employee because of their race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Discriminatory action may not be prohibited if the action is based on the inherent requirements of the position or where it is taken within an institution run in accordance with religious beliefs and is taken in good faith to protect those religious beliefs.

An example of discriminatory adverse action would be an employer refusing to provide an annual pay increment to an employee because the employee was pregnant and would be going on parental leave, despite there being no performance issues and all other employees receiving their annual increase.

What can I do about it?

If you have been subject to an adverse action that is not a dismissal and you wish to make a complaint:

- You can lodge a complaint with the Fair Work Ombudsman who has the power to investigate the allegations and where a contravention is identified, and may initiate legal action. This process is at no cost to you, however the Fair Work Ombudsman will make the final decision whether or not to take legal action; or
- You may make an application to the Fair Work Commission. This is known as a General Protections Dispute Application. If the adverse action was not a dismissal, you have six years to lodge this application. If both parties agree, then the FWC must hold a private conference to try to resolve the dispute. If the dispute is not resolved, you may make an application for a court to deal with it.

An employee, Union or Fair Work Inspector can enforce a workplace right. Please note that applications relating to General Protections which involve a dismissal must be lodged with the Fair Work Commission within 21 days. See Unlawful Termination for more information.

Depending on the circumstances, another option if you have been discriminated against at work may be to make a complaint through either the South Australian Equal Opportunity Commission or the Australian Human Rights Commission. Every situation is different so seek advice before you decide which is the best option for you.

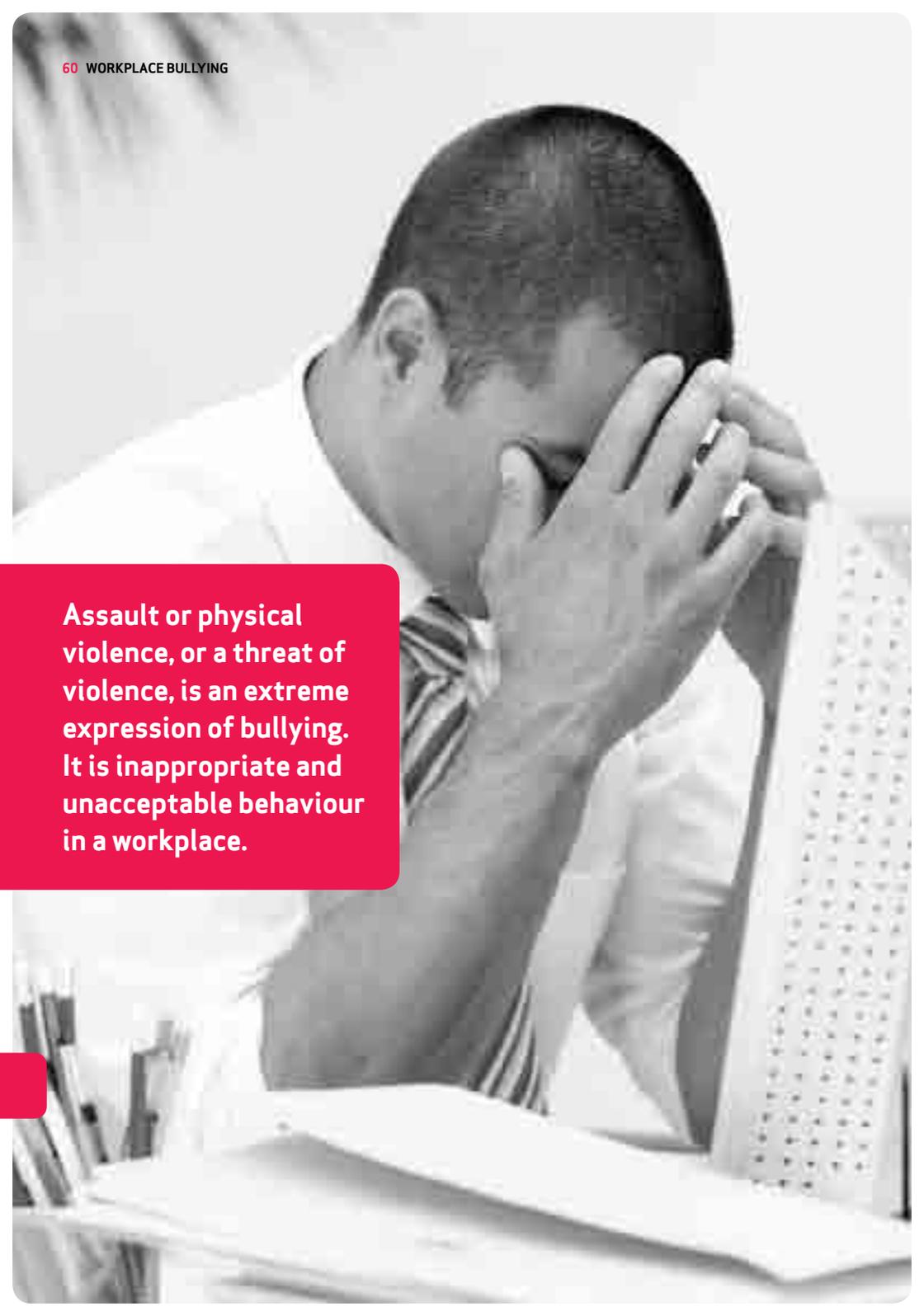
Other General Protection provisions

As well as protection from adverse action on discriminatory or workplace rights grounds, the Fair Work Act 2009 provides for a number of other protections:

- Industrial activities – all employers, employees and independent contractors are free to choose whether or not they join an industrial association such as a trade Union or association and whether or not they choose to engage or not engage in industrial activity, and must not be victimised for their decision.
- Coercion – it is unlawful for a person to organise, take, or threaten to take, action in order to coerce a person to use or not use a workplace right, join a Union or take industrial action, employ or not employ another person, engage or not engage a contractor or to allocate duties.
- Misrepresentation – a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person, the use or effect of the use of a workplace right by another person, another persons' obligation to take part in industrial action, or another person's obligation to tell anyone whether they or someone else are a member of an industrial association or are taking part in any industrial activity.



- Undue influence – it is unlawful for an employer to exert significant or inappropriate pressure on an employee to modify or alter their conditions of employment.
- If you have experienced any of these then seek advice as you may be able to take action.

A black and white photograph of a man in a white dress shirt and a striped tie, sitting at a desk. He is covering his face with both hands, suggesting distress or frustration. The background is slightly blurred, showing office equipment like a chair and a pen holder.

Assault or physical violence, or a threat of violence, is an extreme expression of bullying. It is inappropriate and unacceptable behaviour in a workplace.

WORKPLACE BULLYING

What is workplace bullying?

Workplace bullying is a form of repeated unreasonable behaviour, which threatens, intimidates or humiliates a person or a group of people in the workplace and creates a risk to their health and safety. The bully can be anyone within the workplace including a manager, a supervisor or a co-worker.

Bullying behaviour may be subtle and not easily observed by other people, or it may be overt and noticeable to others. It may include verbal abuse, constant 'put-downs' and aggression. Persistent, unreasonable criticism of work performance or unreasonable work demands are also common bullying behaviours.

Assault or physical violence, or a threat of violence, is an extreme expression of bullying. It is inappropriate and unacceptable behaviour in a workplace. Workplace bullying is sometimes also called workplace harassment or mobbing.

Examples of workplace bullying can include:

- Abusive, insulting or offensive language;
- Being singled out and treated differently to co-workers;
- Displaying material that is degrading or offensive;

- Ongoing attempts to undermine you;
- Setting timelines that are very difficult to achieve or constantly changing deadlines;
- Having reasonable requests for leave or training opportunities denied;
- Behaviour or language that belittles or degrades you especially in front of others.

What is not workplace bullying?

All employers have a legal right to direct and control how work is done and managers have a responsibility to monitor work and give feedback on performance in a respectful and fair way. If you have problems performing your work these should be discussed and dealt with in a constructive and supportive way that does not involve personal threats or derogatory remarks.

You should not be bullied for raising a legitimate complaint.

What is the impact of bullying?

Workplace bullying can impact on individuals, their family and friends and the workplace. People who are bullied often start to feel unwell and may take more sick leave than usual.

They may develop stress related illnesses, find that their work performance suffers, experience financial loss and social isolation and in some cases think about or commit suicide.

Family and friends often feel angry about what is happening at the workplace but feel powerless to help. Relationships may break down as friends and family often find it hard to understand why the bullying won't just stop. Workplaces lose good staff when bullying is allowed to continue. They may suffer a loss of productivity, loss of reputation and loss of morale along with increased costs.

What can I do about a bully?

If you are able to identify the bullying behaviours early on, and you are safe to do so, you can ask the bully to stop the behaviour that is affecting you. Name the behaviour and say how you want to be treated.

Your workplace should have appropriate policies and procedures to address grievance complaints and in the first instance you should, if possible, follow these procedures. Most importantly, seek support from people you can trust.

Is workplace bullying against the law?

In some cases bullying may be dealt with under existing laws. Where bullying involves sexual harassment or discrimination on the basis of personal characteristics, such as disability, gender, race or age, a claim may be made under discrimination law.

Where the bullying includes actions which alter your position or otherwise injure you in your employment, and it is based on a personal characteristic or because you exercised a workplace right, then you may be able to make a complaint to the Fair Work Ombudsman. Check the sections on Discrimination and Sexual Harassment and Adverse Action for more information.

Your employer has obligations under occupational health and safety laws to provide a safe work environment. This includes providing a policy, procedures and training to ensure an environment that is free from harassment. If you consider your workplace fails to meet these requirements you can contact SafeWork SA for more information or to lodge a complaint. Usually you will be expected to have raised this issue with your workplace so that they have had an opportunity to address the bullying and prevent it from happening again.

Sometimes bullying includes physical assault. This is a criminal offence and should be reported to the police immediately. If bullying makes you so sick that you can't work, you may be able to lodge a claim for worker's compensation.

If bullying results in you being dismissed or leaves you no other alternative but to resign, you may be able to lodge a claim for unfair dismissal or unlawful termination through the Fair Work Commission. If you feel forced to resign it is important that you seek advice before doing so. See the When your job ends section for more information.

What can I do if I'm being bullied?

1. Keep a diary of events. Write down what bullying behaviours occurred and include dates, times and witnesses. This can be used at a later date if you choose to make a complaint. The act of writing down what has happened can make you feel validated that what has been going on is unreasonable. When you experience bullying you may end up doubting your own judgement. Keep copies of any emails or letters that demonstrate the bullying behaviours.
2. Seek support. Severe workplace bullying is a traumatic experience and should be taken seriously. Talking to a professional counsellor or trusted friend can help you manage your stress whilst you consider your options.
3. Don't blame yourself. You are never to blame for the bullying behaviours of another person.
4. Avoid being alone with the bully. It is important to ensure your safety as much as possible.
5. Avoid justifying yourself to the bully. When responding to deceptive, unfair or untrue criticisms and allegations avoid explaining, justifying, elaborating or apologising as such responses gives the criticism or allegation validity it does not have. Put the onus on the bully to provide substantive evidence to justify the accusation.
6. Check your workplace grievance procedures. These should tell you who to complain to and how to do this. You should, if possible and it is safe to do so, follow these procedures.

7. Talk to a trusted colleague. Bullying can be so subtle that co-workers may not even notice what is happening. A co-worker may be able to witness bullying behaviours if you alert them to what is going on.
8. Seek advice. Talk to your Union if you are a member, Working Women's Centre, Legal Services Commission or a workplace adviser or advocate. Seeking advice is particularly important if you are thinking about making a complaint to your employer or a government agency.
9. Remain confident in your own ability and judgement.
10. Look after yourself. Eat well, exercise, watch your alcohol intake and be kind to yourself.
11. Further information. There is lots of information on the internet in relation to workplace bullying. Some of it will be more useful to you than others.

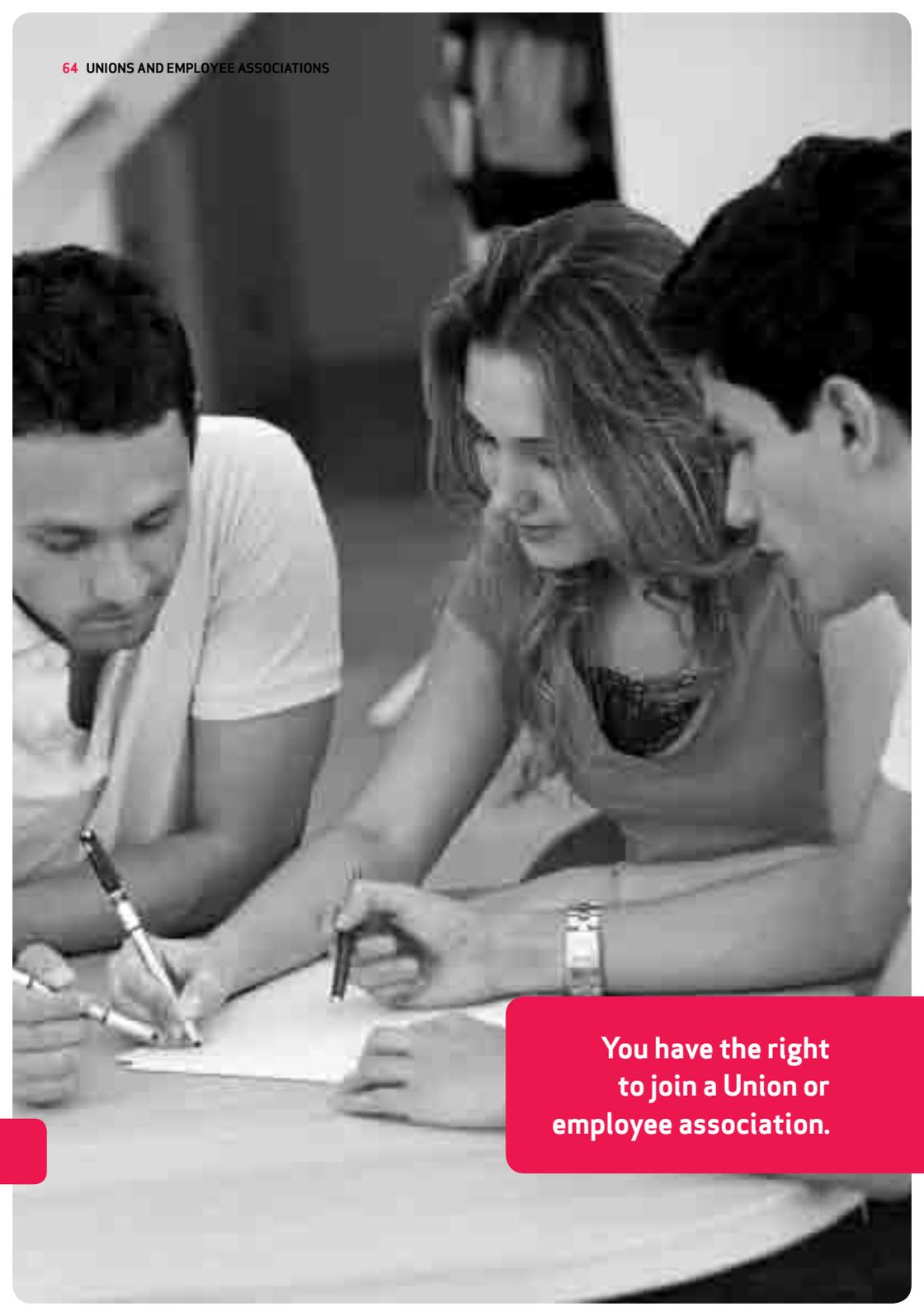
Writing a letter of complaint

Whether to put your complaint in writing can be a difficult decision. Seek advice before you take this step.

Hints and tips for writing a complaint;

- keep the letter brief and to the point (maximum 2 pages);
- stick to the facts;
- remind your employer they have a statutory duty of care to ensure that your workplace is healthy and safe;
- Include a short description of the bullying behaviours. If you need more space to detail a list of events, refer to them in your letter and attach them on a separate sheet;
- Describe the impact the bullying has had on you but protect yourself by not giving information that is too personal;
- Clearly state what outcome you are seeking within a suggested time frame e.g. an investigation, an apology, that the bully be kept away from you, that you receive a written response;
- Sign and date the letter and include your contact details for a reply;
- Keep a copy of your letter for your records.

You can expect that any complaint you forward to your employer or outside agency may escalate the bullying, especially if the bully has a lot of power in your workplace. Not all employers respond positively to complaints, or acknowledge letters but by raising the issue you are giving them a chance to deal with it.



**You have the right
to join a Union or
employee association.**

UNIONS AND EMPLOYEE ASSOCIATIONS

Representation at Work and in Bargaining

Regardless of whether your terms and conditions are set by a Modern Award or an Enterprise Agreement, you have the right to be:

- Consulted about changes at your workplace
- Represented (including by a Union) in those consultations
- Represented (including by a Union) in disputes at work

The Small Business Dismissal Code also provides that employees must be given the opportunity to be represented in any discussions that might lead to dismissal.

You have the right to be represented in bargaining for an Enterprise Agreement. Your employer must recognise and bargain with bargaining representatives. If you are a Union member, then your Union is your bargaining representative. The Union can attend meetings and negotiate directly with your employer on your behalf. If you are not a Union member, you can nominate the Union as your bargaining representative. The Union can become involved at any stage in the agreement-making process provided the Union has at least one member at your workplace.

You have the right to invite a Union Official to your workplace to provide advice and assistance. Union Officials can enter a workplace, even where the employer opposes their entry, provided the official has a valid entry permit and has provided sufficient notice of their intention to enter the premises. Union Officials may visit your workplace for discussions with workers and to investigate suspected contraventions of workplace laws or occupational health and safety matters.

- You have the right to join a Union or employee association.
- You don't need your employer's permission to join and you don't have to tell your employer that you belong to a Union if you don't wish to.
- It is illegal for your employer to prevent you from joining a Union or to discriminate against you because you are a member. Equally, nobody can force you to join a Union or employee association and it is unlawful to discriminate against you because you are not a member.

- This means you cannot be sacked, refused employment, be passed over for promotion or training opportunities, or be given less access to overtime and favourable shifts, simply because you are or are not a Union member.

Unions or employee associations can help you:

- Understand exactly what you are entitled to in your job;
- Get 'back pay' if you have been underpaid;
- If you have been treated unfairly;
- Achieve pay increases and other improvements by assisting in negotiations with your employer;
- Get access to training and a career path by talking to your employer for you;
- By assisting with legal action against your employer;
- Get training on matters such as workers' compensation, health and safety and being a workplace representative or shop steward;
- Negotiate a workplace agreement.

WHAT ELSE DO I NEED TO KNOW?

Whistleblowers

Whistleblowers have wide protection from victimisation resulting from any disclosure of public interest information, which includes information about any person committing any unlawful act, causing a risk to public health, safety or the environment or any public official wasting resources or money. It is against the law to victimise people for disclosing such information or to take legal action against people who blow the whistle in good faith. A whistleblower who is victimised can take legal action in the courts or can lodge a complaint with the Commissioner for Equal Opportunity.

Accidental damage or mistakes

If you accidentally damage someone else's property while you are doing your normal work, then your employer must pay the cost, not you. However if you carelessly or deliberately damage property you may have to pay.

If your cash register or takings are short at the end of the day due to a genuine oversight on your part, your employer is not entitled to deduct the missing amount from your wages. If your employer persists with accusations of dishonesty, seek legal advice or contact your

Union if you are a member. Your employer has the right to inform the police if they believe that you have stolen the missing amount.

Your obligations

Employees have responsibilities to their employer and colleagues.

As an employee you must:

- Do the job that you are employed to do with reasonable care and skill;
- Obey your employer's lawful instructions;
- Work carefully and use the correct equipment and procedures to protect your own safety and that of others;
- Carry out any other obligations detailed in your award or agreement;
- Notify your employer if you are going to be absent from work.

Domestic violence

Your safety at work is important at all times. Intruding on your safety and your ability to work by such things as; stalking, making harassing phone calls to you or your workmates, making you late for work, sending threatening emails, stopping you from attending work functions is unacceptable behaviour.

If you are experiencing domestic violence that is impacting on you at work, your performance at work and/or your workplace seek help from your Union if you are a member, the Working Women's Centre SA, legal aid, a community legal centre or a domestic violence service.

Attitudes to domestic violence are still changing and varied: some workplaces will be supportive giving you additional leave and other protection, others will not. Some workplaces have introduced domestic violence entitlements to paid leave and protection from adverse treatment in their enterprise agreements while other workplaces may have a policy on how to address the impact of domestic violence at work.

WHERE CAN I GET MORE HELP?

Your Union

SA Unions
Ph: 8279 2222
www.saunions.org.au

46 Greenhill Road
Wayville SA 5034

SA Unions Workers Compensation Service

Ph: 8279 2220

Working Women's Centre

Ph: 1800 652 697 / 8410 6499
www.wwc.org.au

1st Floor, Station Arcade
52 Hindley Street
Adelaide, SA, 5000

Legal Services Commission

Ph: 1300 366 424
www.lsc.sa.gov.au

82-98 Wakefield Street
Adelaide SA 5000

Young Workers Legal Service

Ph: 8279 2233
www.ywls.org.au

Fair Work Ombudsman (FWO)

Ph: 13 13 94
www.fairwork.gov.au

Level 2, 148 Frome St
Adelaide, SA, 5000

Fair Work Commission (FWC)

Ph: 1300 799 675
www.fwc.gov.au

Level 6, Riverside Centre
North Tce, Adelaide, SA, 5000

SafeWork SA

Ph: 1300 365 255
www.safework.sa.gov.au

Industrial Relations Court of SA

Ph: 8207 0999
www.industrialcourt.sa.gov.au

Level 6, Riverside Centre
North Tce, Adelaide, SA, 5000

Equal Opportunity Commission

Ph: 8207 1977
www.eoc.sa.gov.au

Australian Human Rights Commission

Ph: (02) 9284 9600
Complaints: 1300 656 419
www.hreoc.gov.au

WorkCover SA

Ph: 13 18 55
www.workcover.com

Employers Mutual

Ph: 1300 365 105
www.employersmutual.com.au

Department of Further Education, Employment, Science and Technology (DFEEST) (Services for apprentices trainees)

Ph: 1800 673 097
www.dfeest.sa.gov.au

Australian Taxation Office Superannuation InfoLine

Ph: 13 10 20
www.ato.gov.au

Australian Prudential Regulatory Authority

Ph: 1300 13 10 60
www.apra.gov.au

Family Assistance Office

Ph: 13 61 50
www.familyassist.gov.au

General Employee Entitlements Redundancy Scheme Hotline (GEERS)

Ph: 1300 135 040 (for claims against insolvent companies)
www.deewr.gov.au

Lifeline

(24 Hour Crisis Support)

Ph: 13 11 14.
www.lifeline.org.au

Telephone Interpreter Service

Ph: 13 14 50

General Employee Entitlements Redundancy Scheme Hotline (GEERS)

Ph: 1300 135 040 (for claims against insolvent companies)
www.deewr.gov.au

