

ENGAGING YOUR OWN SUPPORT WORKERS

TYPE OF EMPLOYEES

What Type of Employee do you have?

Please note that this is intended as a general information guide. It is recommended that this guide be used in conjunction with the *WAI'S Engaging Your Own Support* booklet, which provides general information about your legal considerations when Hiring Your Own Workers or you can get your own legal advice.

➔ <http://waindividualisedservices.org.au/home/national-disability-insurance-scheme/self-management/engaging-your-own-supports/>

If you decide you have an employee, your next decision is what type of employee you have. Your employee could be:

- casual
- part-time (on a fixed term contract or permanent contract)
- full-time (on a fixed term contract or permanent contract)

The information below is from the **Labour Relations Division of the Department of Mines, Industry, Regulation and Safety (WA) (DMIRS)** to assist you to decide what type of employee you have.

➔ <https://www.commerce.wa.gov.au/labour-relations/types-employment-arrangements-1>

Full-time and Part-time

Full-time and part-time employees are workers who are in ongoing employment. They work on a regular, ongoing basis every week for a set number of hours.

Part-time employees receive the same wages and conditions as full-time employees but on a proportionate basis according to the hours they work.

Full-time and part-time employees are entitled to paid annual leave, sick leave, bereavement leave and long service leave, as well as unpaid parental leave.

A full-time employee works, on average, around 38 hours each week.

A part-time employee works, on average, less than 38 hours per week.

➔ <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/full-time-employees>

Casual

A casual employee is an employee, who works on an irregular basis with no expectation of ongoing work. In WA, casual employees are paid a casual loading of at least 20%.

Casual employees do not receive paid sick or annual leave. Casual employees are entitled to bereavement leave and up to two days unpaid carer's leave for each occasion when they need to take care of a family member. Casual employees may also be entitled to long service leave in certain circumstances and unpaid parental leave if they have been employed for 12 months.

There is no type of employment which is "permanent casual". A casual employee receiving regular ongoing work with consistent hours is often not a casual but is either a full or part-time employee. Employers can potentially be liable for back pay of unpaid leave entitlements if an employee is working regular hours on a long term basis but is paid only a casual rate.

 <https://www.commerce.wa.gov.au/labour-relations/types-employment-arrangements-1>

Casual employee	Full-time	Part-time
Hours may vary from week to week	Works regular hours each week/fortnight and generally the same number of hours – around 38 hours per week	Works regular hours each week/fortnight and generally the same number of hours – less than 38 hours per week
Works on an irregular basis as needed	As above	As above
There is no expectation of ongoing work	Employment is ongoing	Employment is ongoing
No consistency in start or finish times	Consistent start and finish times	Consistent start and finish times
Is free to refuse work	Regular hours are required to be worked	Regular hours are required to be worked
No entitlement to annual and sick leave	Entitlement to sick and annual leave	Entitlement to sick and annual leave On proportionate basis

Fixed Term Contract or Permanent

A fixed term employee is employed for an agreed length of time or to perform a specific task under a fixed term employment contract. Fixed term employment can be offered on a full-time or part-time basis. The length of employment needs to be agreed to beforehand.

 <https://www.commerce.wa.gov.au/labour-relations/types-employment-arrangements-1>

Permanent employees are employed on an ongoing basis, with no specified end date, until the employment relationship is terminated.

Fixed term employees and permanent employees are generally entitled to the same wages and conditions.

➔ <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time>

Minimum Conditions of Employment

The minimum conditions of employment for employees covered by the WA state system are set out in the Minimum Conditions of Employment Act 1993 (WA). The minimum conditions include conditions such as:

- rates of pay
- hours of work
- annual leave
- sick leave
- carer's leave
- bereavement leave
- public holidays
- parental leave

For further information about which Minimum Conditions of Employment apply to employees who are covered by the WA state system, please go to:

➔ https://www.commerce.wa.gov.au/sites/default/files/atoms/files/minimum_conditions_of_employment_booklet.pdf

Please note the definition of 'employee' in section 7 the Industrial Relations Act 1979 (WA) and the exclusion regarding a worker engaged in "domestic service in a private home". Information regarding this exclusion is also provided on page 9 of the *WaiS Engaging Your Own Support* booklet.

➔ <http://waindividualisedservices.org.au/home/national-disability-insurance-scheme/self-management/engaging-your-own-supports/>

This general information guide is current as at May 2018. Please note that over time some of the links provided may not work as governing bodies change their website layouts. If a link does not work, we recommend you source the relevant document using a title search with an Internet search engine.

Disclaimer: This checklist is provided as general information only. It is not legal advice. Please consult a professional advisor (for example, a lawyer or accountant) if you require legal or financial advice in relation to your own individual circumstances.

