



Engaging Your Own Supports

A guide to assist you to consider your **legal considerations** when engaging your own supports.

Introduction

It is a person's fundamental right to be able to lead and direct their own life. Western Australia has a strong history of exploring and supporting ways that promote peoples' choice, control and ability to determine and direct their own lives. Self-Directed Support is about people directing their supports and services and deciding how best to use the resources available to them. People choosing to engage their own support persons is a way for people to:

- have more choice and control over their support and life;
- to be respected as an expert on their own life; and
- to determine and arrange their supports accordingly.

This resource is for people who have decided to engage their own support persons. It will assist you in understanding some of your key legal considerations when hiring your own workers and covers five (5) areas of responsibilities. Please note, that there are three (3) areas which are specific to WA. These are the areas of Industrial Relations, Workers' Compensation, and Health and Safety.

We recommend that you consider your responsibilities under **every** area included in this guide. As each area of responsibility is governed under different legislation with different definitions of "employee" or "worker", it is critical to work through each area **separately** and independent of each other.

WAiS works in partnership with KPMG, Perth, in relation to clarifying people's legal obligations as *employers*. We wish to acknowledge their support and contribution to this guide.

If you need any further information or support, please contact WAiS. If you need further clarity about your own circumstances, we recommend you seek your own legal advice.

Disclaimer: This information is intended as a guide only and should not be considered as legal advice.

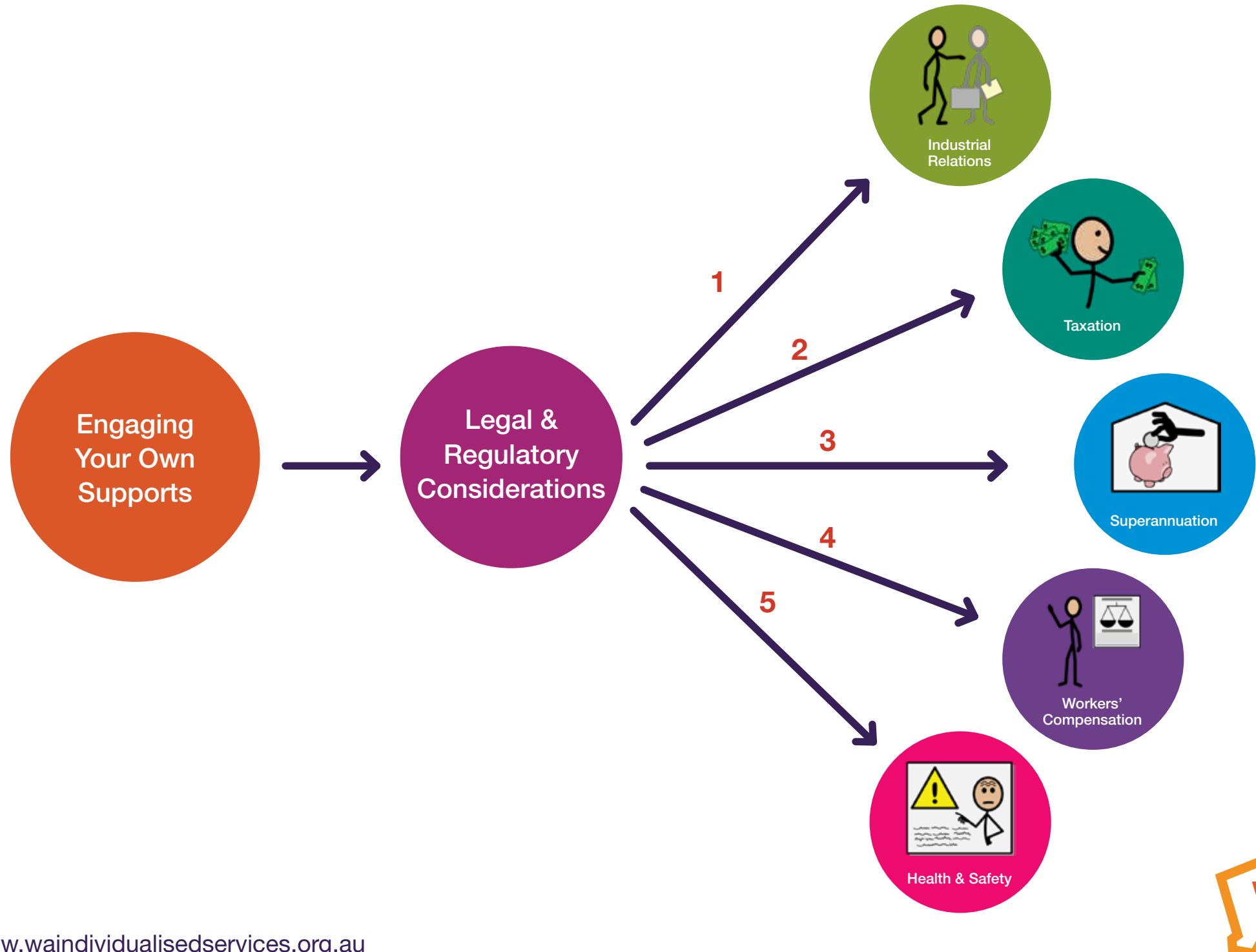
We have used SymbolStix symbolic language throughout these resources (<https://www.n2y.com/products/symbolstix>)

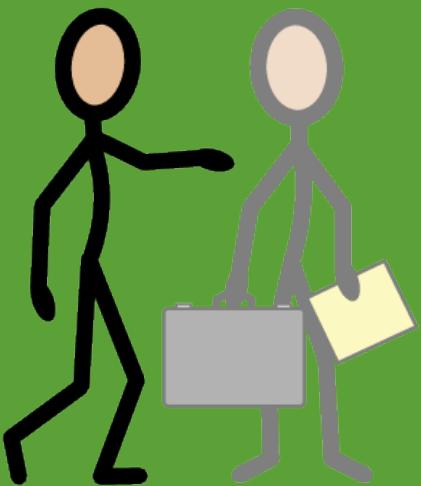
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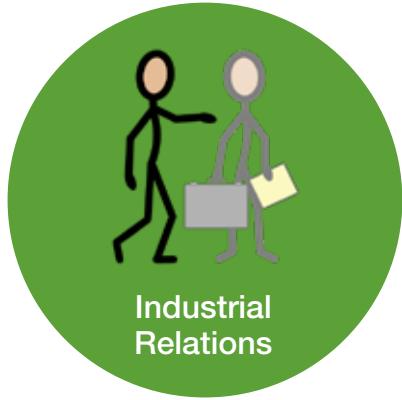


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Industrial Relations



Industrial Relations is the mutual rights and duties of employers and employees including the conditions of employment and wages and salaries.

**Which Industrial Relations system applies –
National or State?**

**Is my worker an employee for the purposes
of the relevant system?**

National Fair Work Act



Relevant ONLY if employer is a
CONSTITUTIONAL CORPORATION.

This is a financial corporation; trading corporation; or foreign corporation.

"Constitutional Corporation" means a corporation to which paragraph 51(xx) of the Constitution applies.



Does NOT apply to individuals / families personally engaging supports.

References:

s12 Fair Work Act 2009 (Cth)
<http://bit.ly/s12FairWorkAct2009>

s51(xx) Constitution of Australia

WA State Industrial Relations Act



Is my worker an employee?

The Industrial Relations Act 1979 (WA), s.7(f) states:

- employee means:
 - any person employed by an employer to do work for hire or reward including an apprentice;
 - any person whose usual status is that of an employee;
 - any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or
 - any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if he is in all other respects an employee.

YES, person is employee



Need to abide by:

- Minimum Conditions of Employment Act 1993 (WA)
<http://bit.ly/MinimumConditionsofEmployment>
- Awards (where applicable)

BUT (in WA only)...

- It does **not** include any person engaged in domestic service in a private home unless:
 - more than 6 boarders or lodgers are therein received for pay or reward; or
 - the person so engaged is employed by an employer, who is not the owner or occupier of the private home, but who provides that owner or occupier with the services of the person so engaged.

**YES,
person is excluded**



Minimum Wage
SHOULD still apply



Minimum Conditions
MAY apply
(except Redundancy).

**NO, this exclusion
does not apply**



MUST abide by:

- Minimum Conditions of Employment Act 1993 (WA)
[http://bit.ly/
EmploymentAct1993](http://bit.ly/EmploymentAct1993)
- Minimum Wage
- Awards (where applicable)

Reference:

Industrial Relations Act 1979 (WA)

<http://bit.ly/IRACT>

Minimum Conditions of Employment booklet, Department of Commerce WA <http://bit.ly/2bBJh3M>

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Taxation



Employee or contractor?

When to check if workers are employees or contractors

With every worker you engage, you need to determine if they are an employee or a contractor in order to know what your tax responsibilities are.

How to determine if workers are employees or contractors

To correctly determine if a worker is an employee or a contractor, you need to look at the whole working arrangement. The ATO looks to a common law definition of “employee” and uses the following 6 indicators to decide if someone is an employee or contractor.

You need to go through all these indicators in order to assess and decide if your worker is an employee or contractor.

The ATO refers to employers as businesses throughout the indicator table. This does not mean you have to be a business. You can be a private individual employing workers.

You can find further information at <http://bit.ly/2bvDetP>

PAYG withholding and household employees
<http://bit.ly/2oSmuZ2>

Employee or Contractor?

Situation	Contractor	Employee
Control over the work - who tells worker how to do the work?	Worker can do the work in any way they like as long as the work is completed to an agreed standard, or to the specific terms in their contract or agreement.	Worker follows any reasonable work requests of their supervisor or the business they work for.
Independence - Worker seen to be a part of the business or separate?	Worker operating their own business independently. Worker completes the tasks or services as agreed to in their contract or agreement and are free to accept or refuse extra work.	Worker seen to be part of the employer's business and are not independent from it.
Basis of payment - how does the person who pays the worker work out how much to pay?	Worker is paid all or the majority of the amount of their quote once they finish the work (to an agreed standard). Worker generally supplies an invoice to the other business before being paid.	Worker paid either: <ul style="list-style-type: none">• for the amount of time (normally hours or shifts worked)• a price for each item or for each activity done• a commission.

Ability to sub-contract or delegate - who does the work?	Worker free to pay someone else to do the work instead of the worker.	Worker can't pay someone else to do the work.
Equipment, tools and other assets - what worker needs to do their work?	<p>Worker brings to the job all or most of the things they need to do their work.</p> <p>Worker has to buy or hire their tools of trade or any equipment needed to do the work.</p>	<p>The business worked for provides worker with all or most of the things the worker needs to do their work.</p> <p>or</p> <p>Worker provides all or most of the things needed to do their work but the business they work for gives them an allowance or pays them back for the cost of the things bought.</p>
Commercial risks - if worker makes a mistake, who pays to have it fixed?	Worker responsible for fixing their own mistakes at their own expense.	The business the worker works for is responsible if the worker makes a mistake. The business pays for the cost of fixing it.

If Employee...



MUST withhold tax

What you then need to do:

1. Register for PAYG withholding

Application to register a PAYG withholding account (NAT 3377). You will receive a WPN (Withholding Payer Number) in response to this application.

<http://bit.ly/2qsmwyW>

2. Get your worker to complete and provide you with a TFN (tax file number) Declaration (NAT 3092)

<http://bit.ly/TFNdeclaration>

Lodging TFN declaration data electronically

<http://bit.ly/2puDLWM>

3. Withhold tax according to PAYG tax tables

The ATO has a tax withheld calculator you can use

<http://bit.ly/TaxWithheldCalculator>

4. Report and Pay withheld amounts to the ATO

<http://bit.ly/ReportWithheldAmounts>

5. Complete end of year payment summaries

<http://bit.ly/2pS8vCy>

6. When your worker ceases to work for you

<http://bit.ly/2qyF6tC>

If Contractor...

ABN

No ABN

Statement by Supplier can be used when the supply is “wholly of a private or domestic nature” for that supplier.*

No Statement by Supplier

Withhold 47% from payments

You DO NOT need to withhold tax
(Support person responsible for tax obligations)

*Suppliers cannot use this form if they are entitled to an ABN for the relevant activity

What you then need to ensure:

ABN

You will need to ask for their ABN and check that it's status is active at: <http://abr.business.gov.au/>

For a worker to register for an ABN go to:

<http://bit.ly/2oSqYPo>

Most likely, they would use ABN registration for individuals (sole traders) (NAT 2938) <http://bit.ly/2p381FW>

No ABN

When a business doesn't quote an ABN:

<http://bit.ly/2p3OUv4>

Statement by Supplier

<http://bit.ly/StatementBySuppliers>

Volunteer...

There is no legal definition of ‘volunteer’ for tax purposes. A dictionary definition of volunteer is someone who enters into any service of their own free will, or who offers to perform a service or undertaking. A genuine volunteer does not work under a contractual obligation for remuneration and would not be an employee or independent contractor.

Please go to <http://bit.ly/VolunteerNonProfit> for further information.

In particular, the ATO provides information in relation to:

- Paying volunteers;
- Expenses incurred by volunteers
- Volunteers and PAYG holding

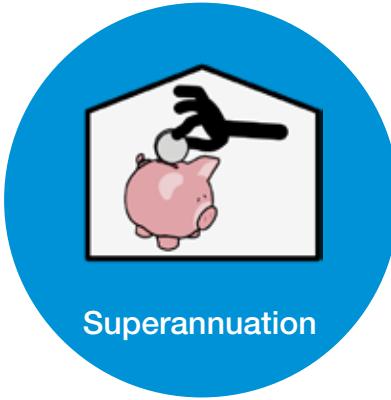
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Superannuation



Superannuation



Do I have to pay my employee/contractor superannuation?

When to check if workers are employees or contractors

With every worker you engage, you need to determine if they are an employee or a contractor in order to know what your superannuation responsibilities are.

How to determine if workers are employees or contractors

To correctly determine if a worker is an employee or a contractor, you need to look at the whole working arrangement. The ATO looks to a common law definition of “employee” and uses the following 6 indicators to decide if someone is an employee or contractor. (Refer to page 13)

You need to go through all these indicators in order to assess and decide if your worker is an employee or contractor.

<http://bit.ly/DolNeedToPaySuper>

Super guarantee eligibility tool

<http://bit.ly/SuperEligibilityCalculator>

If Employee...



Superannuation Guarantee required when:

- \$450 or more before tax per calendar month



If Private or Domestic nature...

There is no formal definition of what constitutes private and domestic, however the ATO states that work of a domestic or private nature ordinarily means work relating personally to the individual making payment for the work; OR, to the person's house, home or family.



Superannuation Guarantee required when:

- \$450 or more before tax per calendar month
- and
- more than 30 hours per week

If Contractor...



Do I fall under Extended definition of an “employee”?

s12(3) Superannuation Guarantee (Administration) Act 1992 (Cth)

“If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.”

<http://bit.ly/SuperannuationGuarantee>

NO

YES

see next page
(pg. 25)

No Superannuation
Guarantee required

YES



Superannuation Guarantee required when:

- \$450 or more before tax per calendar month



If Private and Domestic nature...

There is no formal definition of what constitutes private and domestic, however the ATO states that work of a domestic or private nature ordinarily means work relating personally to the individual making payment for the work; OR, to the person's house, home or family.



Superannuation Guarantee required when:

- \$450 or more before tax per calendar month and
- more than 30 hours per week

If you need to pay Super Guarantee then:

1. Set up super

<http://bit.ly/SetupSuperforEmployers>

2. Calculate how much to pay

<http://bit.ly/HowMuchSuperToPay>

Currently, the super guarantee is 9.5% of your worker's ordinary earning time (OTE). This is the amount they earn for their ordinary hours of work.

3. Pay the super contribution

<http://bit.ly/PaySuper>

Super Stream – payments and associated data to super funds made in a specific electronic format.

Small Business Superannuation Clearing House – a free clearing house that distributes super payments to your employees superannuation funds. <http://bit.ly/1SLaTmR>

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Workers' Compensation



Do I need Workers' Compensation?

You must have workers' compensation insurance for anyone you employ who the Workers Compensation legislation defines as a 'worker'.

By keeping a current workers' compensation insurance policy and having an injury management system in place, you will ensure compliance with the Workers' Compensation and Injury Management Act 1981.

The definition of a 'worker' includes:

- full-time worker on a wage or salary
- part-time, casual and seasonal worker
- contractor and sub-contractor (in some circumstances)
- family member.

Generally, individual workers cannot cover themselves for workers' compensation, even if they are self-employed and have an ABN. An exception is when an individual is a working director of a company (Pty Ltd).

<http://bit.ly/WorkCoverWorkers>

Insurance Cover Required?



YES



Code 96010

Private Households
Employing Staff

Insurers who provide
Workers' Compensation:

CGU: 13 24 81

Allianz: 13 10 00

GIO: 13 10 10

QBE: 133 723



NO

If a worker's ABN is
Pty Ltd, Workers'
Compensation cover
may not be required.
Please contact your
insurer for advice.



No Workers'
Compensation
required

Further information:

Premium is calculated as follows

**Estimated Wages x Risk Rate = Base Premium + GST +
Broker Fee = Total Premium**

Premium is adjusted at the end of the policy period by declaring the Actual Wages.

These are subject to the Workcover WA minimum premium + GST + Broker Fee.

The minimum premium changes each financial year.

The risk rate changes each financial year.

Your rights & obligations:

<http://bit.ly/WorkCoverRights>

- covering them (taking out insurance)
- reporting accidents
- injury management
- managing claims and their return to work

Workers' Compensation: A Guide for Employers

<http://bit.ly/WorkersCompensationsGuideEmployers>

Injury Management: A Guide for Employers

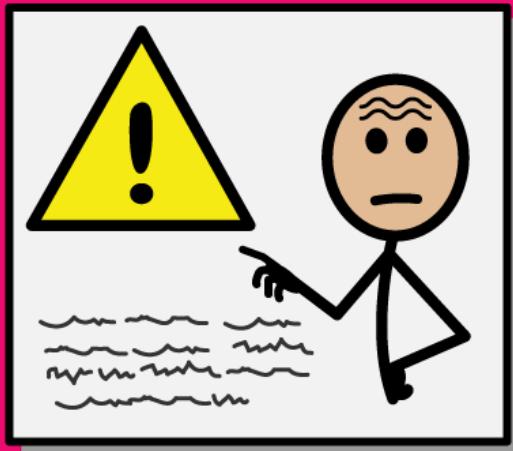
<http://bit.ly/InjuryManagementGuideEmployers>

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Health and Safety



Safe and Healthy Workplace:

In Western Australia, the law requires employers to provide a high standard of safety and health at their workplaces and ensure, as far as practicable, that employees are not injured or harmed because of their work.

As an employer, you have a responsibility to provide and maintain, as far as practicable, a safe working environment for your workers. This is called the employer's 'duty of care'. This includes:

- providing and maintaining workplaces, plant and systems so your workers are not exposed to hazards;
- providing information about any hazards and risks from the work;
- providing instruction, training (including an induction) and supervision to all employees so they are able to work safely;
- consulting and co-operating with safety and health representatives (if any) and all employees about safety and health;

- where it is not practicable to avoid the presence of hazards, providing adequate personal protective clothing and equipment without any cost to workers; and
- ensuring safety and health in relation to plant and hazardous substances so workers are not exposed to hazards.

You must also ensure that the safety and health of people who are not your workers (ie non-employees) is not affected by the work, a hazard or the system of work. This duty, applies where there are visitors, volunteers, work experience students or any other people at the workplace.

Your Responsibilities



- Provide “safe workplace” as far as practicable
- Do not “expose to hazards” as far as practicable
- Ensure adequate and appropriate
 - training
 - instruction
 - information
- Conduct regular assessments of workplace

Further information:

Your responsibilities as an employer:

<http://bit.ly/WorksafeResponsibilities>

Safety for small business – this link also contains a quick quiz “How does your workplace measure up?” to see if you have done enough to protect yourself and those within your duty of care:

<http://bit.ly/SmallBusinessSafety>

General information and a suggested risk management process:

<http://bit.ly/WorksafeGetStarted>

Home Based Care information and checklist

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/home_based_care_2019.pdf

Information to Employees:

As an employer, you also have a responsibility to inform all your employees about:

- how to resolve any complaints or concerns about safety and health at work;
- what to do in an emergency;
- what to do if they are injured; and
- their rights to workers' compensation if they are injured.

What to do when an issue arises:

Under the OSH Act, as an employer, you have other duties. You must:

- when a safety and health issue arises where there are different opinions, attempt to resolve it according to the relevant (issue resolution) procedure

Section 24 of the OSH Act

- report certain types of injuries and diseases and deaths arising in connection with work to WorkSafe

Section 23I of the OSH Act

- hold an election for safety and health representative or set up a safety and health committee where workers request their establishment – where this occurs, you must follow the requirements in the *Occupational Safety and Health Act 1984*. You may also set these up on your own initiative.

Where you receive a report from an employee about hazards or any injury or harm to health, you must within reasonable time after receiving the report:

- investigate the matter and determine the action, if any, to be taken; and
- notify the employee about what was decided.

References:

Section 19(1) of the *Occupational Safety and Health Act 1984* (OSH Act).

Section 21 of the OSH Act,

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