



Hiring your own support workers

A guide to the law



Introduction

You have the right to be able to lead and direct your own life.

Western Australia (WA) has a strong history of exploring and supporting ways that promote peoples' choice, control and ability to decide and direct their own lives.

Self-Directed Support is about:

- being able to choose your own supports and services
- deciding the best way to use the resources available to you.

Being able to hire your own support workers is a way for you to:

- have more choice and control over your life
- be respected as an expert on your own life
- decide and arrange your supports.

This resource is for people who have decided to hire their own support workers. It will help you understand some of your obligations as an employer. It covers five areas of responsibility.

Please note, there are three areas that are only relevant if you live in WA because they are about WA laws:

- industrial relations
- workers' compensation
- health and safety.

As each area of responsibility is covered by a different law, you need to work through them separately. Some areas also use different definitions for words. For example, 'employee' might mean one thing for tax, but something else for superannuation.

We work in partnership with KPMG, Perth, to make people's obligations as clear as we can. We want to acknowledge their support and contribution to this guide.

If you need more information or support, please contact us.

Disclaimer: This information is a guide only. You should not take it as legal advice.

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Industrial relations



Industrial Relations

What are Industrial Relations?

Industrial relations are the rights and duties of employers and employees. It includes, but is not limited to, the conditions of employment, wages and salaries.

In Australia, there are two industrial relations systems that operate:

- the national system, which is governed by the *Fair Work Act 2009 (Cth)*
- the State system, which is governed by the *Industrial Relations Act 1979 (WA)*.

In this section, we will explain when you will need to use the national or State industrial relations law. We will also help explain what the WA State law says about whether your worker is an 'employee'.

Fair Work Act

The *Fair Work Act 2009 (Cth)* is the **national** industrial relations law.

You can read the *Fair Work Act 2009 (Cth)* online at: <http://bit.ly/2tSPAd0>

You **only** need to follow the national industrial relations law if you are a Constitutional Corporation. Examples of a Constitutional Corporation are:

- a financial corporation
- a trading corporation
- a foreign corporation.

This means you don't have to follow the national industrial relations law if you are an individual or family member that hires support workers.

Instead, you need to follow the **State** *Industrial Relations Act 1979 (WA)*.

Industrial Relations Act

The *Industrial Relations Act 1979 (WA)*, is the **State** industrial relations law for WA.

You can read the *Industrial Relations Act 1979 (WA)* online at: <http://bit.ly/2srzYc3>

Under this law, the word 'employee' means:

- any person employed to do work, including an apprentice
- any person whose usual status is 'employee'
- any person employed as a canvasser and paid by commission or percentage reward
- any person who leases tools or equipment, or vehicles that are used to deliver goods, if they are in all other respects an employee
- any person who is the owner, or part-owner, of any vehicle that is used to transport goods or passengers, if they are in all other respects an employee.

If you hire a support worker and they come under one of these points, then they are an employee.

Minimum Conditions of Employment Act


The *Industrial Relations Act 1979 (WA)*, says that employers need to follow the *Minimum Conditions of Employment Act 1993 (WA)*.

The *Minimum Conditions of Employment Act 1993 (WA)* explains the minimum entitlements for an employee and what the employee can then expect, including:

- reasonable hours of work
- minimum rates of pay
- minimum leave conditions
- how employment can change.

You can read the *Minimum Conditions of Employment Act 1993 (WA)* online at:

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



You also need to:

- pay at least the minimum wage
- check if any relevant award applies.

An award is a document that outlines what you need to pay and how to treat your employees. Under the State industrial relations system, there are awards for different industries and types of work. Each award is based on the type of work people do and has a description of the work the award covers.

Exception to the rules

In WA, there is an exception in the *Industrial Relations Act 1979 (WA)*.

Under the *Industrial Relations Act 1979 (WA)*, when looking at the meaning of employee, it says that this **does not** include people who work in domestic services in a private home, unless:

- there are more than six boarders or lodgers in the private home who are paying to be there
- someone else pays the employee who:
 - isn't the person being supported
 - doesn't live in the home
 - doesn't own the home.

Not all support workers automatically fall into this exception.

You need to think about if your support worker is providing a domestic service and if it is in a private home.

You also need to think about whether someone who is not living with you is hiring the support worker to help you in your home.

If you are not sure if this applies to you, we suggest that you get some legal advice.

It is important because it will have an impact on what your support worker is entitled to, how you budget and manage your support workers.

If the exception applies to your support worker, it means that the *Industrial Relations Act 1979 (WA)* does not apply.

However, you should still pay your support worker the minimum wage or above.

There may also be minimum conditions of employment that still apply, except for redundancy. If you are not sure about this, please seek legal advice.

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Taxation

Tax

_____ = _____
_____ = _____



Taxation

What is taxation?

Taxation is paying a part of your income to the government.

A support worker who is getting an income may have to pay part of it as tax.

The government spends the tax money on things that we all need, like roads, schools and health care. In Australia, tax is managed by the Australian Taxation Office (ATO).

Is your worker an employee or a contractor?

You need to work out if each support worker you hire is an employee or a contractor. This is so you know what your tax responsibilities are.

This is important because who pays the support worker's tax is different depending on whether they are an employee or a contractor.

For example, usually a contractor is responsible for paying their own tax.

To work out if your worker is an employee or a contractor, you need to look at the whole working arrangement.

The ATO has a list of six indicators they use to decide. You need to use the same indicators to help you decide.

The ATO uses the word 'businesses' to describe employers, but you don't need to be a business. You can employ workers on your own.

You can find more information on their website <http://bit.ly/2t2sGQc>

Situation	Employee	Contractor
Control over the work – who tells the worker how to do the work?	You tell the worker how the work should be done (what, how and where). The worker will follow any reasonable request.	The worker can choose how to do the work, as long it meets the terms of the contract or agreement.
Independence – is the worker a part of the business or separate?	The worker is seen as part of your business. They are not independent.	The worker is running their own business independently. They do the work that is in their contract – they can accept/refuse extra work.
Basis of payment – how do you work out how much to pay the worker?	The worker is paid either: <ul style="list-style-type: none"> • for the hours or shifts they work • a price for each item or activity • a commission. 	The worker is paid all or most of the amount in their quote when their work is done. The worker will usually give you an invoice before you pay them.

Situation	Employee	Contractor
Ability to sub-contract or delegate – who does the work?	The worker can't pay someone else to do the work.	The worker is free to pay someone else to do the work.
Equipment, tools and other assets – what does the worker need to do their work?	<p>You provide the worker with what they need to do their work.</p> <p>or</p> <p>The worker buys what they need and you pay them an allowance or pay them back.</p>	<p>The worker provides the equipment they need to do the work.</p> <p>You don't give them an allowance or reimbursement for the equipment.</p>
Commercial risks – if the worker makes a mistake, who needs to get it fixed?	<p>You are responsible if the worker makes a mistake.</p> <p>You need to pay to fix it.</p>	The worker is responsible for fixing any mistakes they make.

If your support worker is an employee

If your support worker is an employee, you must withhold tax when applicable.

Withholding tax means paying a part of your employee's wages to the ATO as tax.

To withhold tax, you need to:

1. Register for pay as you go (PAYG) withholding

You will need to fill out a form to register a PAYG withholding account

The form number is NAT 3377.

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

You will get a letter from the ATO with your Withholding Payer Number (WPN).

2. Get your employee's tax file number (TFN)

They will need to fill out a TFN Declaration form.

The form number is NAT 3092.

<http://bit.ly/TFNdeclaration>

3. Work out how much tax you need to withhold

You can use the ATO's calculator to work this out.

<http://bit.ly/TaxWithheldCalculator>

You don't pay this amount to your employee. You hold onto it until it's time to pay it to the ATO.

4. Report and pay withheld amounts to the ATO

You need to tell your employee how much tax you have withheld from each pay.

You need to tell the ATO how much tax you have withheld.

Then you need to pay the ATO that amount.

<http://bit.ly/ReportWithheldAmounts>

5. Make payment summaries at the end of the financial year

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

The financial year is different to a calendar year.

The financial year doesn't go from 1 January to 31 December.

The financial year goes from 1 July to 30 June.

At the end of the financial year, you need to:

- tell your employee:
 - how much you paid them that year
 - how much tax you withheld.
- tell the ATO:
 - how much you paid all your employees
 - how much tax you withheld.

6. Follow the ATO's instructions if your employee stops working for you

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

This includes:

- paying any final withheld amounts to the ATO
- sending your employee a payment summary by 14 July
- keeping their TFN declaration form until the end of the next financial year.

If your support worker is a contractor

If your support worker is a contractor, you need to:

1. Ask for their Australian Business Number (ABN).

If they need to register for an ABN, they need to go to this website:

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

They will probably need the *ABN registration for individuals (sole traders)* form.

The form number is NAT 2938.

<http://bit.ly/2p381FW>

2. Check their ABN is still active at this website:

<http://bit.ly/2ugV3dT>

If their ABN is active and they provide you with an invoice with their ABN, you do not need to withhold tax.

An invoice is a document that includes:

- a list of goods or services that need to be paid for
- the amount that needs to be paid.

If they will not give you their ABN and will not register for one, you need to:

1. withhold 47 per cent of the payment
2. report and pay the withheld amount to the ATO

<http://bit.ly/ReportWithheldAmounts>

3. give the contractor a payment summary when you pay them the rest of the amount.

You need to tell them how much tax you have withheld.

There are some exceptions for when a contractor does not give you their ABN.

You do not need to withhold tax if the contractor's work is completely private or domestic.

If it is completely private or domestic, the contractor needs to fill out a *Statement by Supplier* form and give it you, together with their invoice.

<http://bit.ly/StatementBySuppliers>

You might like to get some advice about this. Your contractor should decide if they can use the Statement by Supplier form or need an ABN.

If they are a volunteer

There is no legal definition of 'volunteer' for tax purposes. The dictionary says a volunteer is someone who offers to help, or carry out a service, of their own free will.

A genuine volunteer offers to help because they want to.

Most of the time, they don't get paid for their work.

They aren't employees or contractors.

The ATO has more information about:

- paying volunteers
- reimbursing volunteers for costs they pay out-of-pocket
- PAYG holding.

<http://bit.ly/ATONonProfitVolunteers>

Notes

Superannuation



Superannuation

What is superannuation?

Superannuation is paying money into an employee's superannuation fund. People often call superannuation 'super'.

A super fund is like a special bank account used to save for retirement.

People add to their super fund throughout their working life until they retire.

Usually, they can only access the money in their super fund after they turn 65.

Do you have to pay your employee or contractor super?

You need to work out if your support worker is an employee or a contractor.

We listed the differences between employees and contractors on page 12.

You can use these differences to find out if your support worker is an employee or a contractor.

If your support worker is an employee

Employers need to pay super if their employee earns more than \$450 per month before tax.

There is another rule if the work is 'private or domestic'.

This means work that is:

- for the person paying for the work
- or**
- for the person's house, home or family.

This rule may apply to you.

If this rule does apply to you, it will change when you need to pay super. This will be when your support worker:

- earns at least \$450 per month before tax
- and**
- works more than 30 hours per week.

If they don't do both of these things, you do not need to pay super.

If your support worker is a contractor

If your support worker is a contractor, you normally do not need to pay super.

But, there is another rule if their contract is mostly for their labour.

If the work they are doing is their own physical and mental effort, it is called 'their labour'.

In this case, they are treated the same as an employee and you may need to pay super.

The same rules about super apply to them as any other employees.

How to pay super

To start paying super, you need to:

1. Set up super

You need to follow the ATO's instructions to set up super.

This means:

- Choosing a default fund. This is where money goes if your employees don't choose their own fund.
- Offering your support worker a choice of fund. You need to give your support worker a form to fill out so it goes to their fund.
- Sending your support worker's TFN to their fund. You need to do this so the ATO can keep track of where the support worker's super is.
- Keeping records. This means writing down how much super you are paying.

2. Work out how much to pay

At the moment, you need to pay 9.5 per cent of your worker's ordinary time earnings (OTE).

OTE is the amount they earn for how many hours they usually work.

You can find more information is available on this website:

<http://bit.ly/HowMuchSuperToPay>

3. Pay the super

You can pay super using the ATO's Small Business Superannuation Clearing House (Clearing House).

The Clearing House sends super payments and information electronically. This makes it easier and faster.

You can find more information about the Clearing House on the ATO website:

<http://bit.ly/PaySuper>

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Workers' compensation



Workers' compensation

What is workers' compensation?

Workers' compensation is money that is paid if a worker gets hurt at work. All employers must have insurance in case someone gets hurt at their workplace.

Do you need workers' compensation insurance?

You need to have workers' compensation insurance for anyone you hire who the law says is a 'worker'.

A worker may be a:

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

You will need to meet your obligations under the *Workers' Compensation and Injury Management Act 1981*. To do this you must have:

- a current workers' compensation insurance policy
- an injury management system (a way to keep track of any injuries that happen to your employees).

Generally, individual workers cannot cover themselves for workers' compensation, even if they are self-employed and have a sole trader ABN. However, if your support worker works for a Pty Ltd company, you may not need workers' compensation insurance. If you are not sure, you can get advice from an insurer.

What type of workers' compensation insurance would you need?

You need a specific type of insurance called Private Households Employing Staff.

The Insurance Code is 97000.

How do you get workers' compensation insurance?

You can set up workers' compensation with many insurance companies.

The following are some companies that understand the type of workers' compensation you need to have:

- CGU – telephone **13 24 81**
- Allianz – telephone **13 10 00**
- GIO – telephone **13 10 10**
- QBE – telephone **13 37 23**

More information

How the premium is worked out

Your insurance company will use this formula to work out how much to charge you for your workers' compensation insurance:

Estimated wages x risk rate = base premium + GST + broker fee = total premium

They may revise your premium at the end of the policy period (the amount of time the insurance covers) when you tell them the actual wages you paid your workers.

Workcover WA is responsible for setting the base premium. They will change it each financial year. The risk rate also may change each financial year depending on risk factors, such as your claims history and what safety and injury management policies you have in place.

Your rights and obligations

You can find information on the Workcover WA website about:

- how to report accidents
- how to manage injuries
- how to manage any claims that your workers make
- preparing your injured worker to return to work.

<http://bit.ly/WorkCoverRights>

There is also a guide to workers' compensation on their website: <http://bit.ly/2eBWUOV>

And a guide to managing injuries: <http://bit.ly/2sKZQz6>

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Health and safety



Health and safety

Safe and healthy workplaces

The law says that employers must provide a high standard of health and safety in their workplaces. As much as possible, you have a responsibility to provide your workers with a safe working environment. This is called an employer's 'duty of care'. It includes:

- providing and maintaining workplaces so your workers are not exposed to things that might hurt them
- giving your workers information about any hazards or risks in their job
- giving your workers instructions, training and supervision so they can work safely
- giving your workers the equipment they need so they can work safely
- regularly assessing the safety of your workplace
- working with health and safety representatives (if any).

As an employer, it is also your job to tell your employees:

- how to deal with any complaints or concerns they have about safety in your workplace
- what to do in an emergency
- what to do if they are injured
- their rights to workers' compensation if they are injured.

If it is not possible to avoid hazards and risks, you need to provide personal protective clothing and equipment to your workers for free.

You also need to make sure that anyone else who enters your workplace is not affected by any risks or hazards.

This includes:

- visitors
- volunteers
- work experience students
- any other people at the workplace.

If an issue comes up

If your support worker tells you about a health and safety issue, you should:

- check the issue
- fix the issue if you need to
- tell your worker what you have decided.

As an employer, you also have obligations under the *Occupational Safety and Health Act 1984*:

- If an issue comes up and you and your worker have different opinions, you should try and fix the problem using an issue resolution process.
- If an injury or death occurs at your workplace, you need to tell WorkSafe.
- You may like to set up a safety and health committee, or a hold an election for a safety and health representative. There are rules in the Act about how to do this.

More information

You can find more information about your responsibilities as an employer on this website:

<http://bit.ly/WorksafeResponsibilities>

You can also do the quiz 'Quick safety quiz for small business', to see if you have done enough to make your workplace safe: <http://bit.ly/SmallBusinessSafety>

You can find general information about risks and how to manage them on this website:

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

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Contact us

If you have any questions, you can contact us on:

Phone: 9485 1997

Email: admin@waindividualisedservices.org.au

Website: www.waindividualisedservices.org.au

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