



Hiring your own support workers

A guide to the law







This guide is written in an easy to read way.

We use pictures to explain some ideas.



The guide has been written by

WA's Individualised Services (WAiS).



When you see the word 'we', it means WAiS.



Some words are written in **bold**.

We explain what these words mean.

There is a list of these words on page 56.



You can ask for help to read this guide.

A friend, family member or support person may be able to help you.



What's in this document?

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About this document



This document is for people who decide to hire their own support workers.



If you decide to hire your own support workers, the law will give you some important responsibilities – things you need to do.



This document explains the laws that apply to hiring your own support workers.



Hiring your own support workers can give you more choice and control over the support that you receive.

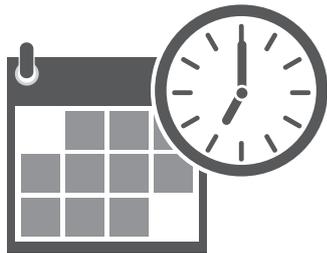


This can make it easier to find the best support workers for your needs.



It also means you can choose:

- what work you want them to do



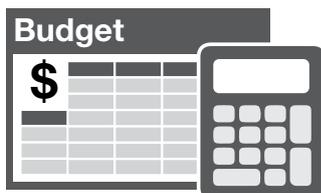
- when they should work



- how they should do the work.



Understanding the law is important because you need to know what's expected of you when you hire your own support workers.



The different laws may affect the way you budget and manage your support workers.

Your responsibilities

There are 5 main areas you need to think about:



- **Industrial Relations** – working together with your support workers to ensure support workers have a safe, fair and productive workplace.



- **Taxation** – paying income tax to the government



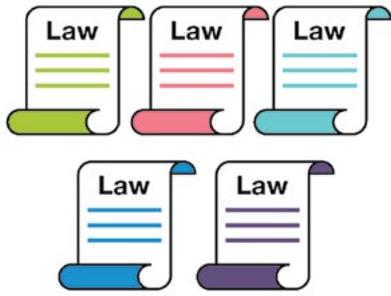
- **Superannuation** – adding to your support workers' retirement savings



- **Workers' Compensation** – insurance in case a support worker gets injured at work



- **Health and Safety** – making sure everyone is safe at work.



Each of these areas is covered by different laws, so you need to read them separately.



You also need to understand some of the different words that are used in the different laws.



For example, 'employee' might mean one thing for tax but another thing for superannuation.



You might need to get some advice to make sure you understand your responsibilities.

You could ask:



- a lawyer



- an accountant



- an advocate



- someone else you trust.

Industrial Relations



Industrial Relations

What are Industrial Relations?



Industrial Relations are the rules about how employers and employees work together.

These include how:



- employers should treat employees



- employees should work



- employees should be paid.

Which laws do you have to follow?



Some organisations need to follow the *National Fair Work Act*.

It is different for individuals and families who are hiring their own support workers.



You don't need to follow the *National Fair Work Act* unless you are a Constitutional Corporation.



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



You can find out more about this Act online.

<http://bit.ly/IRACT>

The *Minimum Conditions of Employment Act* explains what your employee can expect, including:



- reasonable hours of work



- minimum rates of pay



- minimum leave conditions



- how employment can change.



You also need to:

- pay at least the Minimum Wage



- give at least the minimum amount of leave



- meet the other rules of employment.



You also need check if any relevant **award** applies.

An award is a document that outlines what you need to pay and how to treat your employees.



Each award is based on the type of work people do.

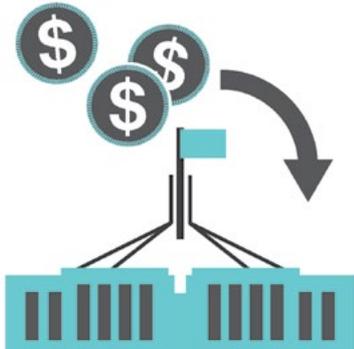
Taxation

Tax

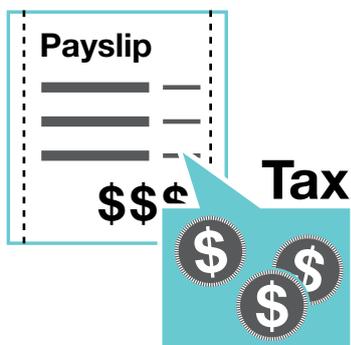


Taxation

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.

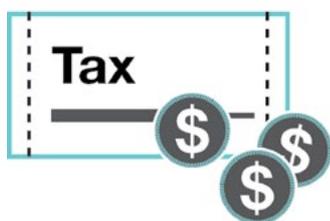


In Australia, tax is managed by the Australian Taxation Office, or ATO for short.

Is your worker an employee or a contractor?



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



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



Usually a contractor is responsible for paying their own tax.



This is why it is important to work out whether your worker is an employee or a contractor to avoid problems with taxation laws.

| Employee | Contractor |
|----------|------------|
| • | • |
| • | • |
| • | • |
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| • | • |
| • | • |
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We explain what the differences are between employees and contractors.

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

Employees



Employers have more control over the way employees work than they do over contractors.

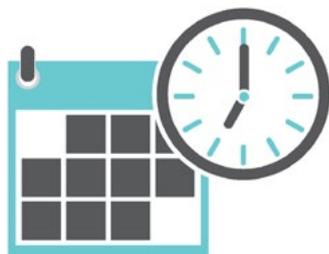
Employees are told how they should work, including:



- what they should do



- where they should work



- when they should work



- what they will be paid for the work.



Employees are paid based on how many hours they work.



Employees cannot pay someone else to do their work for them.



You give your employee the equipment they need to do their job.



You are responsible for the work your employee does.

Contractors



Contractors decide how a job should be done.



Contractors run their own business.



Contractors are paid for finishing the job they were asked to do.



Contractors can pay other people to do their work if they want to.



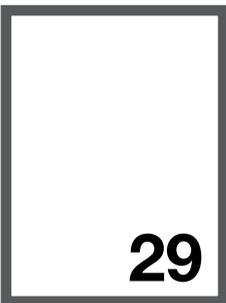
Contractors bring their own equipment to do the job.



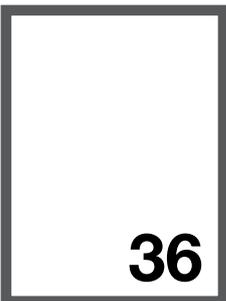
Contractors are responsible for their work. If something is wrong with their work, they have to fix it.



Contractors pay their own tax and, in some cases, their own superannuation.

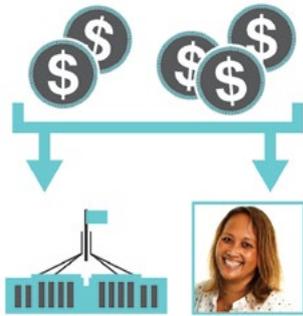


We explain more about tax for contractors on page 29.



And we explain what superannuation is on page 36.

If your support worker is an employee

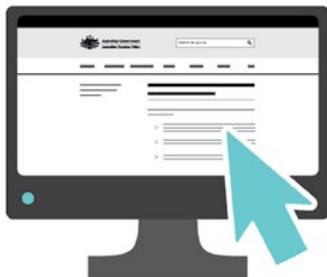


If your support worker is an employee, you must withhold tax when needed.

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.

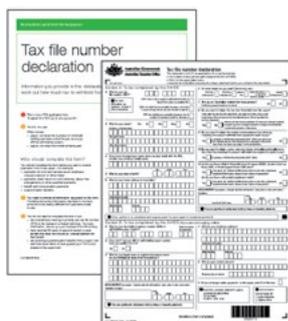
The form number is NAT 3377.

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



You will get a 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.

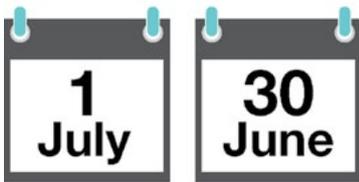
Then you need to pay the ATO that amount.

<http://bit.ly/ReportWithheldAmounts>

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



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.



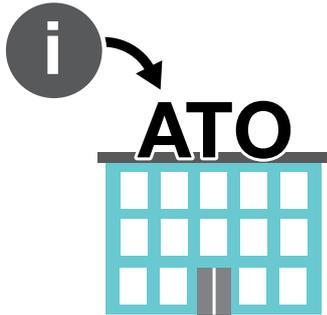
At the end of financial year, you also need to tell the ATO:

- how much you paid all your employees
- how much tax you withheld.



You also need to tell the ATO about any payments that you didn't report through **Single Touch Payroll**.

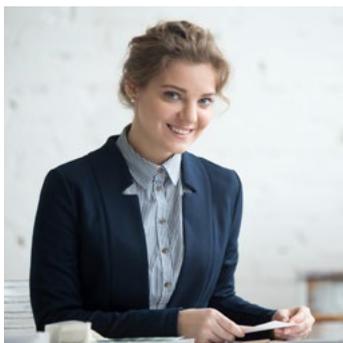
<https://bit.ly/ATOAnnualReporting>



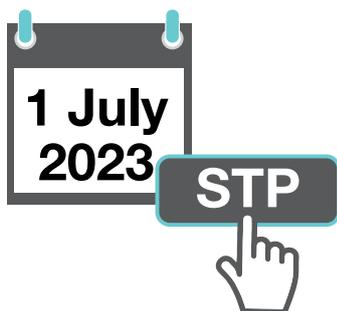
Single Touch Payroll (STP) is a way of giving the ATO information about your employees' tax and super.



It is a type of accounting program.



You can ask an accountant to help you with STP.



You need to start using STP from 1 July 2023 if you have a WPN.

<https://bit.ly/AboutSTP>

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

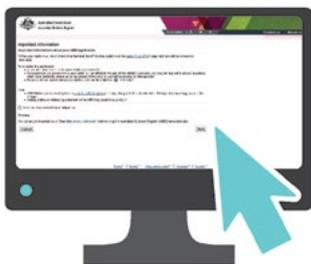
If your support worker is a contractor, you need to:

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



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

<https://bit.ly/ABNregn>



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

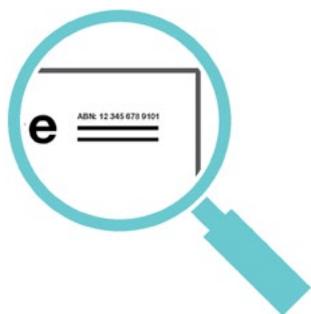
The form number is NAT 2938.

<https://bit.ly/ABNforms>



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

<http://abr.business.gov.au>



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:

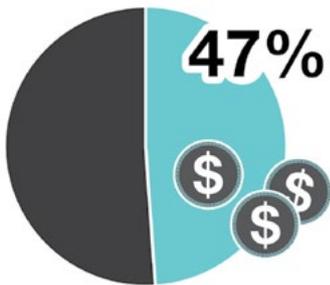
- a list of goods or services that need to be paid for
- the amount that needs to be paid.



They have to pay their own tax.



If they do not give you their ABN, you need to:



1. Withhold 47% 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.

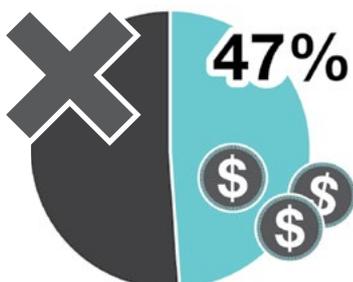


If a contractor doesn't have an ABN, they can use the 'ATO Statement by Supplier form'.

<http://bit.ly/StatementBySuppliers>



A contractor can choose to use this form if they don't have an ABN.



If they give you a completed form, you don't need to withhold 47%.

If they are a volunteer



Volunteers offer to help because they want to.



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



But they can sometimes get payments.

We call them reimbursements, allowances and honoraria.



They aren't employees or contractors.



The ATO has more information about paying volunteers.

<http://bit.ly/ATONonProfitVolunteers>

Superannuation



Superannuation

What is superannuation?



Superannuation is paying money into an employee's superannuation fund.

Lots of people 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.

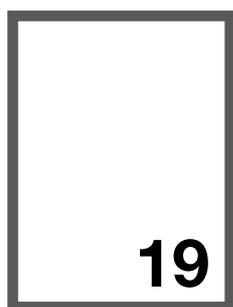


Usually, they can only access the money in their super fund after they turn 65.

Do you need to pay superannuation?



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 19.

| Employee | Contractor |
|----------|------------|
| • ——— | • ——— |
| • ——— | • ——— |
| • ——— | • ——— |
| • ——— | • ——— |
| • ——— | • ——— |
| • ——— | • ——— |

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 on any money their employee earns.



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



This means work that is for:

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

30 hours+



This rule may apply to you.

If this rule applies to you, you will only need to pay super if your support worker works more than 30 hours per week.



If they don't do more than 30 hours per week, you do not need to pay super.

If your support worker is a contractor



If your support worker is a contractor, you might still need to pay super.

There is a 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'.



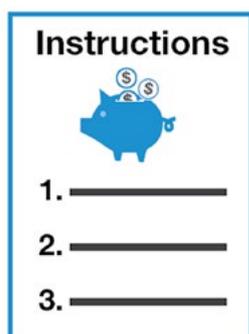
In this case, they are treated the same as an employee and you may need to pay super.



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:



- 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.



- Choosing a default fund.
This is where money goes if your employees don't choose their own fund.



- Sending your support worker's Tax File Number (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



You need to pay a percentage of your worker's ordinary time earnings (OTE).



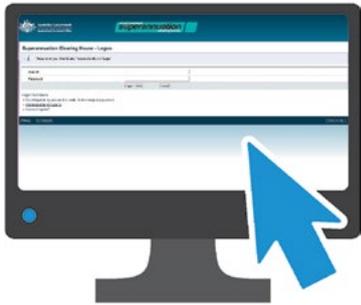
OTE is the amount they earn for how many hours they usually work.



You can find more information about what percentage you need to pay on this website.

<https://bit.ly/HowMuchSupertoPay>

3. Pay the super



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



Small Business Superannuation Clearing House sends super payments and information electronically.

This makes it easier and faster.



You can find out more about Small Business Superannuation Clearing House here:

<http://bit.ly/PaySuper>

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 must have workers compensation insurance when you have an employee.

You might also need workers compensation insurance when you have a contractor.



You can ask your support worker if their ABN is a Pty Ltd company.

If they are a director of a Pty Ltd company, you might not need workers compensation insurance.



If you are not sure, you can get legal advice.

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 96010.

How do you get workers' compensation insurance?



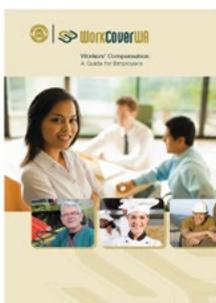
You can set up workers' compensation with many insurance companies.

More information



There is more information about your responsibilities at this website:

<http://bit.ly/WorkCoverRights>



There is also a guide for employers about workers' compensation at this website:

<https://bit.ly/WorkersCompWA>

Health and safety



Health and safety

Keeping each other safe



The laws say 'people conducting a business or undertaking' are in charge of their workers' health and safety.

We call these people PCBUs.



You might be a PBCU if you hire your support worker.

You can find out more about PCBUs on this website:

www.wa.gov.au/system/files/2021-11/211100_GL_PCBU_0.pdf



Safety is everyone's responsibility.



This means you have a responsibility to keep:

- yourself safe
- the people around you, safe.



If you hire your support workers, there are things you must do for:

- your workers
- their workplace.

Health and safety laws



The law you need to follow is called the *Work Health and Safety Act 2020 (WA)*.



The *Work Health and Safety Act* covers:

- your workers
- other people at your workplace, like visitors.

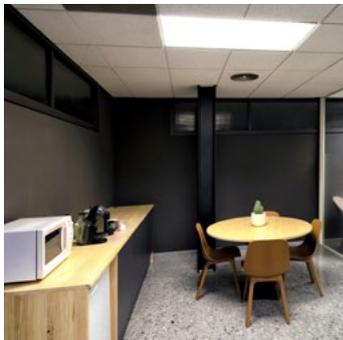


It is your job to understand this law.

What you need to do



As an employer, you need to make your workplace as safe as possible.



This means you need to make sure your workplace has a:

- bathroom
- place to eat.



You also need to make sure your:

- equipment is safe
- workers know about safety.



This might mean they need:

- training
- instructions
- information.



Your workers need to know what to do:

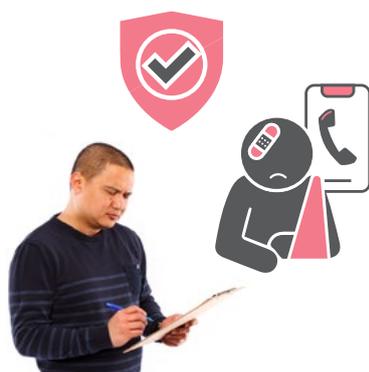
- in an emergency
- if they are injured.



Your workers also need to do things to make sure they are as safe as possible.



You also need to tell your workers about their rights to workers' compensation if they are injured.



You need to:

- regularly check how safe your workplace is
- know how to report any serious injuries that happen.

More information



You can find out more at this website:

<http://bit.ly/WorksafeResponsibilities>



You can find out more about the *Work Health and Safety Act 2020* in this guide:

<https://bit.ly/WHSWAGuide>



You can also fill out this quiz to see if you have done enough to make your workplace safe:

<http://bit.ly/SmallBusinessSafety>



You can find out more about having workers in your home on this website:

<https://bit.ly/WHShomeguide>

Word list



Award

An award is a document that outlines what you need to pay your employees.

It is based on the type of work people do.



Industrial Relations

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- employees should work
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Invoice

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



Single Touch Payroll

A way of telling the ATO your employees' tax and super information.

It is a type of accounting software.

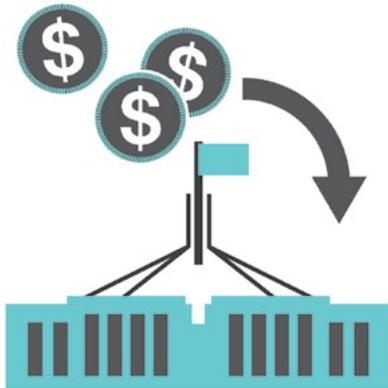


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More information



If you have any questions, please contact us.



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