

# Business Information Sheet

## Payroll and FairWork

### Payroll and FairWork Information Requirements

There are many legal obligations that an employer is bound by. As soon as you engage employees, you will most likely have tax and superannuation obligations at the least, and there are many more issues to consider when employing people.

**It is the legal responsibility of the employer to pay the correct rate of pay, superannuation, taxes, and entitlements, and to abide by all the relevant employment related laws, including FairWork.**

### Employer Obligation Checklist

- **Modern Awards:** These are industry or occupation-based minimum employment standards which apply in addition to the National Employment Standards (NES). They were created to establish one set of minimum conditions for employers and employees across Australia who work in the same industries and occupations. Almost every worker in Australia is covered by a Modern Award. While there are still some State-based awards in operation, these do not apply to employers and employees covered by the *Fair Work Act 2009*.
- **National Employment Standards:** The NES contain 10 minimum workplace entitlements which have applied to all employers and employees in the national workplace relations system since 1 January 2010, (however only certain entitlements apply to casual employees). These are legally-enforceable minimum employment terms and conditions.
- **Fair Work Information Statement:** All employers covered by the national workplace relations system have an obligation to give each new employee a *Fair Work Information Statement* before, or as soon as possible after, the employee starts employment.
- **Fair Work Compliance:** It is unlawful to ask people to work on unpaid trials, pay in goods rather than money, pressure employees into agreements, coerce employees or third parties to not exercise their rights, discriminate, terminate unfairly, and engage in '*sham contracting*' arrangements. Heavy penalties apply for breaches of these laws.
- **Dispute Resolution:** Modern awards generally impose a process to assist in the resolution of disputes that arise about matters under the award or in relation to the NES. If the dispute can't be resolved at the workplace level, the matter can generally be referred to the Fair Work Commission.
- **Record-Keeping:** According to the Fair Work Ombudsman (FWO), records need to be kept for 7 years, while the ATO says 5 years. Err on the side of caution and keep ALL payroll related records for 7 years.
- **Superannuation Choice Form:** An employer must provide a *Superannuation Choice Form* to all employees on commencement of employment and you must abide by that choice. If the employee does not make a specific choice, you must pay superannuation into a default superannuation fund.

## Other Employment Obligations

**FairWork governs many areas related to employment, for example:**

Employee entitlements such as: annual leave, hours of work, flexibility arrangements, anti-bullying laws, penalty rates, working on public holidays and much more.

Examples of other areas covered are employment contracts, unfair dismissal, termination of employment, change of business ownership and record keeping obligations.

**You May Need to Pay All or Some of These Taxes and Expenses:**

- PAYG Withholding to the ATO
- Superannuation to a Clearing House or Superannuation Fund
- Fringe Benefits Tax to the ATO
- Payroll Tax to the State Revenue Office
- Workers Compensation Insurance

**You May be Governed by All or Some of These Laws:**

- FairWork Act 2009
- Pay As You Go Act 1999
- Superannuation Guarantee Act 1992
- Workplace Health and Safety State laws
- Payroll tax State laws
- Long Service Leave State laws
- Workplace Relations Act 1996
- Privacy Act 1988
- Freedom of Information Act 1982
- Independent Contractors Act 2006
- Anti-Discrimination Act 1977
- Workplace Gender Equality Act 2012
- Child Support Act 1989
- Paid Parental Leave Act 2012

There may be other laws, relevant to your state or industry that also apply to you.

**Further Advice, Information and Templates**

- FairWork
- Department of Human Services
- Australian Taxation Office
- Guide to Employing People