

# EMPLOYMENT LAW: STUDENT LEGAL SAYS KNOW YOUR RIGHTS

So what is employment? Employment is based on a contractual relationship between an employer and an employee, where there is an agreement to work in return for wages or salary. The main employment types can be permanent part time, permanent full time, or casual.

The contract can be written or oral, and can contain different provisions or aspects of the employment relationship. Although it can be oral, it is a good idea to get it in writing!

## **National Employment Standards (NES)**

There are 10 minimum terms and conditions of employment that apply to employees in Australia, although not all entitlements apply to casual employees. The terms are summarised as follows:

1. Maximum weekly hours of work 38 hours – and employees may refuse to work unreasonably additional hours
2. Requests for flexible working arrangements
3. Parental leave and related entitlements
4. Annual leave
5. Personal carers leave and compassionate leave
6. Community service leave
7. Long service leave
8. Public holidays
9. Notice of termination and redundancy pay
10. Fair Work Information Statement

## **Pay**

Your employer must pay you at least the minimum rate set out in your award or agreement. The rate will depend on the type of work you do and the time you work. Your pay must also be made on a regular basis.

You may also be paid:

- Allowances for certain tasks
- Overtime for work outside regular hours
- Penalty rates for night work
- Weekend & public holiday rates

## **Pay slips**

You should also receive pay slips to ensure you are getting the correct wages and entitlements. They should be provided within 1 working day of payday, even if you are on leave. They can be given in either electronic form or hardcopy. At the end of each financial year, employers have to give employees a summary of their income for the past year. This is called a payment summary (PAYG).

## **Unpaid Work**

Unpaid work can include a person wanting to get experience in the industry, to test their job skills or to provide volunteer time and effort for a not-for-profit organization. These include:

1. Student placements: Must be an approved placement with no entitlements for pay, and done as a requirement of an education or training course)
2. Internships/ work experience: Must not be in an employment relationship. This will depend on the length of the work period, the person's position, and who benefits from this arrangement.
3. Unpaid trial: You should be aware that some unpaid trials go beyond what is reasonably required to demonstrate the skills needed for the job, and therefore the person should be paid the appropriate minimum pay.

## **Superannuation**

Employers must pay 9.5% superannuation to workers who earn \$450 or more per month (before tax). Overseas students and workers on any other type of visa are also entitled to superannuation. You should regularly check your superannuation to make sure the contributions are being made, and contact the ATO if the employer has failed to do so.

## **Notice and Final Pay**

Notice is the length of time an employee or employer must give to end the employment. This will depend on your length of employment. If proper notice is not given to you, you can take legal action.

## **Period of Continuous service** Minimum

Notice period

Less than 1 year:	1 week
1-3 years:	2 weeks
3-5 years:	3 weeks
Over 5 years:	4 weeks

To terminate an employee, the employer must give written notice of their last day of employment by:

- delivering it personally
- leaving it at the employee's last known address, or
- sending it by pre-paid post to the employee's last known address.

The employer can choose to pay you instead of letting you work through your notice period. If this is the case, the amount paid must be equal to the amount that would have been paid if you had worked through the notice period. If you want to resign, verbal notice is sufficient

## **Unfair Dismissal**

This is when you have been dismissed from your job in a harsh, unjust or unreasonable manner. You can apply to the Fair Work Commission within 21 days of your dismissal. You must have been employed for at least 6 months before you can apply for unfair dismissal. The commission will take a number of factors into account in determining whether you were unfairly dismissed.

*NOTE: some of this information has been taken from the Fair Work Ombudsman website and The Law Handbook.*

## **Roya Aran, Events Coordinator & Nina Lau, Solicitor**

*UWS Student Legal Service is a joint venture between Macquarie Legal Centre and UWS. The service is co-located at the UWS Parramatta Community Justice Clinic at Parramatta Local Court. Student Legal Services provides legal advice to currently enrolled UWS students. The service is provided to UWS students through SSFA funds.*

Disclaimer: The information is general. It does not constitute and should not be relied on as legal advice. Should you require advice, please contact Student Legal Services on (02) 8688 7875 or email [studentlegalservices@uws.edu.au](mailto:studentlegalservices@uws.edu.au)