



# **RAW GUIDE TO Employment basics**

**... or how to sleep  
easy as an employer**

## **Disclaimer**

This document does not constitute legal or human resources advice and should not be relied upon as such. It is intended only as an example and general overview on matters of interest and is not intended to be comprehensive. You should contact RAW Human Resources Pty Ltd or seek professional advice before acting or relying on any of the content.

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# INTRODUCTION

Thinking you might need to employ now or in the future...?  
...or do you already employ some humans in your business and have always wondered if you've done it right?

In this guide, we've used our specialist HR experience to pull together key information and links to help you get the foundations right for employing people in your business. Sources we reference include:

Click the various bullet points for quick links

- **Australian Tax Office**
- **business.gov.au**
- **Fair Work Commission**
- **Fair Work Ombudsman**
- **WA Department of Mines, Industry Regulation and Safety**
- **Workcover WA**

## Why have we done this for you?

Because you're reading this, we know you're probably interested in expanding your workforce and want to do it right (both best practice and lawfully). And if you have done an internet search on how to do this you may have been daunted by the sheer scale of information available to you.

*"We are committed to helping small to medium sized businesses grow and because of this, we've used our experience of working in HR roles for over 18 years to save you time by pulling some of the essential information you need to help you plan your staffing needs...for FREE"*

As you progress through this RAW Guide, you'll find useful information relevant to your needs.

We've also included links throughout the Guide so you can read about these topics in more depth if you wish.



There is more than enough targeted information for you to move forward by yourself. But if you do need further help or have other questions, or would rather outsource the “HR Manager” part of our role, then get in touch with one of the RAW HR team. We live and breathe (and love!) HR and are always happy to talk about how we can help you.

Either way, you’re on the right path by thinking about basic employment foundations (such as record keeping, payslips, conditions of employment etc) right from the outset – it will save you time, money and headaches later.

And once you have your employment foundations in place, you can then start to think about the more meaningful ways in which you can help your humans be their best - like how to engage and align their development to strengthen your business....all safe in the knowledge that you're meeting the laws that govern employment in Australia.

Enjoy the read and we look forward to helping you reach your destination. **PS don't forget to ask us for the Employment Checklist that supports this Guide!**

Rob Sheppard  
'Principal Human'  
RAW Human Resources





## PLANNING

Every employer in Australia, no matter their size, has legal employment obligations under National or State industrial relations systems.

This RAW Guide to setting up your employees correctly has been created to help you plan for some of the basic compliance matters you'll need to have in place.

There are also a range of other matters we highlight - often nowhere near a business's radar when they start out.

These other matters come from Acts and Regulations such as Workplace Health and Safety (WHS) laws, workers' compensation, superannuation or business tax implications on what you offer an employee.



## ONE MORE THING...

If you're about to take on or expand your workforce we want to ask you one last question....can you *really* take on an employee?

Yes you can plan the compliances and how you'll engage and motivate your workforce but it is important to still consider the *financial* implications as well as the legal obligations before you do.

Your HR advisor or accountant should be high on your list of trusted advisors to help with this decision...

**... BUT IN THE MEANTIME, HERE ARE 6 INITIAL QUESTIONS TO ASK YOURSELF BEFORE EMPLOYING.**



# CONSIDER...

**01**

## **ISSUES**

*Is there another issue causing you to be so busy?*

**02**

## **CAPACITY**

*In what capacity will you hire them to really meet your need?*

**03**

## **COSTS**

*Can you afford an employee? Do you understand all the costs on top of what you're going to pay someone?*

**04**

## **PLANS**

*How does the hiring decision fit in with your short, medium and long term business plans? Are casuals best?*

**05**

## **FUTURE**

*How busy are you now and in the future? This will impact on the type of employment you will want to offer.*

**06**

## **OUTSOURCE?**

*What avenues are there to engage outsourced help – could you use an online service or the growing number of consultants?*

*“All forms of businesses can employ someone – but we advise taking some time to really think through your current and future needs to drive the next steps in the process”*



# TYPES OF EMPLOYMENT?



Once you have considered the need and the capacity of the business to employ someone, consider the type of employment you can offer.

Sometimes this might also prompt you to reconsider outsourcing the work rather than engaging your own employees.

Options for businesses to have some extra help can include:

- **permanent or fixed-term** employees, whether full-time or part-time
- **casual** employees
- **trainees or apprentices**
- independent **contractors**
- **volunteers** (for some businesses)
- temporary employees through an employment agency or **labour hire** firm
- outsourced **consultants**
- outsourced **job boards** (for example [fiver.com](https://www.fiver.com))





ALL OF THESE TYPES OF  
EMPLOYMENT HAVE  
DIFFERENT  
OBLIGATIONS AROUND  
STATUTORY  
OBLIGATIONS AND  
ENTITLEMENTS.

It is important to match the type of employment to the flexibility needed by the business and the requirements of the employee.

Mismatch these elements and you may find an unhappy employee or worse, a breach of your **compliance** obligations to provide certain conditions of employment.

# INDEPENDENT CONTRACTORS

While talking about types of employment, we'll quickly highlight another often asked question around independent contractors.

There is a belief among many employers that engaging a person who has their own ABN automatically means that individual is an independent contractor. This is sometimes very far from the case.

The definitions of 'employee' and 'contractor' can vary across government regulations and can have different consequences for you as an employer.

For example, workers considered to be contractors may be employees for superannuation purposes.

If in any doubts whatsoever, seek independent advice from a HR consultant or a business advisor on the topic.

***Make sure you know the rules about sham contracting arrangements. Sham contracting is where an employer attempts to portray an employee as an independent contractor. This is unlawful under the Fair Work Act 2009 and can attract a penalty of \$54,000.***

[Click here  
WA State  
System  
Employers](#)

[Click here  
National  
Employers](#)

[Click here  
ATO](#)



# INDUSTRIAL RELATIONS SYSTEMS

The system you fall under (National or WA State) will largely depend on the type of business structure you have chosen... noting that all businesses will still have obligations under certain laws such as the National Employment Standards (NES).

## **But why do you need to know this now?**

Each system provides for different terms and conditions of employment based on awards (or award-free employment).

This may come as a surprise as many businesses assume paying above an award rate means they no longer need to consider penalties and allowances anyway.

## **This is most often not the case.**

If in any doubts whatsoever, seek independent advice from a HR consultant or a business advisor on the topic.

- 
- ***Confirm your industrial relations system***
  - ***Plan the terms and conditions of employment***
  - ***Decide on any other ways to attract and engage employees***
  - ***Create a contract***



Click here

National  
Employers



Click here

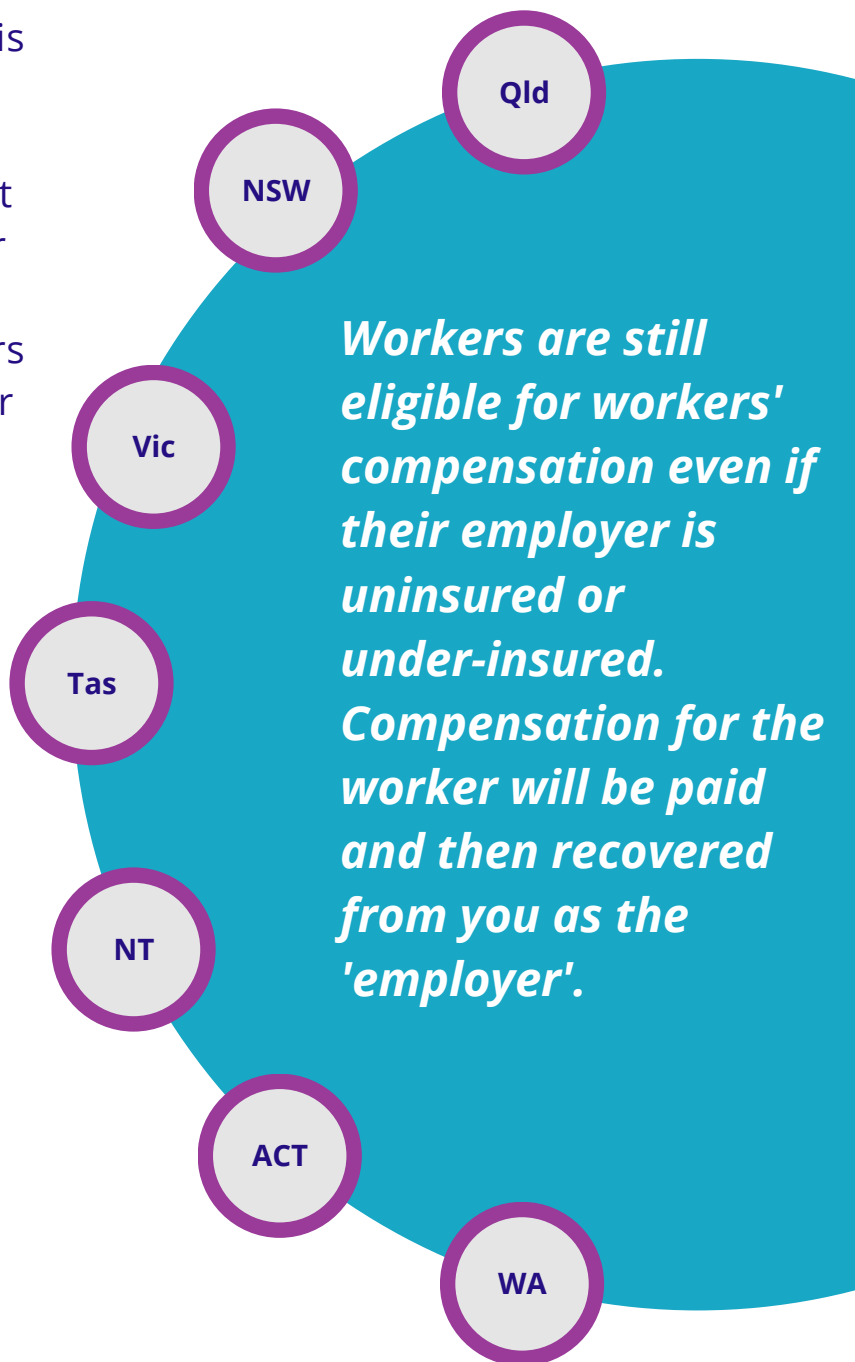
WA State System  
Employers

# WORKERS' COMPENSATION

It is helpful to start thinking about your obligations to provide certain insurance covers before you have an employee commence. Key amongst these is Workers' Compensation.

Your insurance broker can assist with this and to what level cover is required (e.g. it is based on estimates of payroll not numbers of employees and can be further impacted by the locations in which you have employees working).

In the meantime, visit your relevant state or territory's workers' compensation insurance authority to find out more about your obligations:



# WORKERS' COMPENSATION

Some key (but not all) points to consider include:

- workers' compensation is covered by legislation in each individual state and territory
- employees cannot be required to sign a document contracting them out of workers' compensation
- you may need to cover contractors in certain circumstances
- in WA, it is optional to cover working directors for workers' compensation
- if you employ or contract a family member, you must cover them for workers' compensation – even if they live in the family home (source: Workcover)

If in any doubts whatsoever, seek independent advice from a HR consultant or a business advisor on the topic.

***"Having the right insurance will help protect your business and minimise its exposure to risk. This may include insuring your business, your income and your commercial risk."***

*business.gov.au*

# LONG SERVICE LEAVE

Long service leave (LSL) is a paid leave entitlement for employees who have worked continuously in a business for a specified period of time. Full-time, part-time and casual employees are entitled to long service leave.

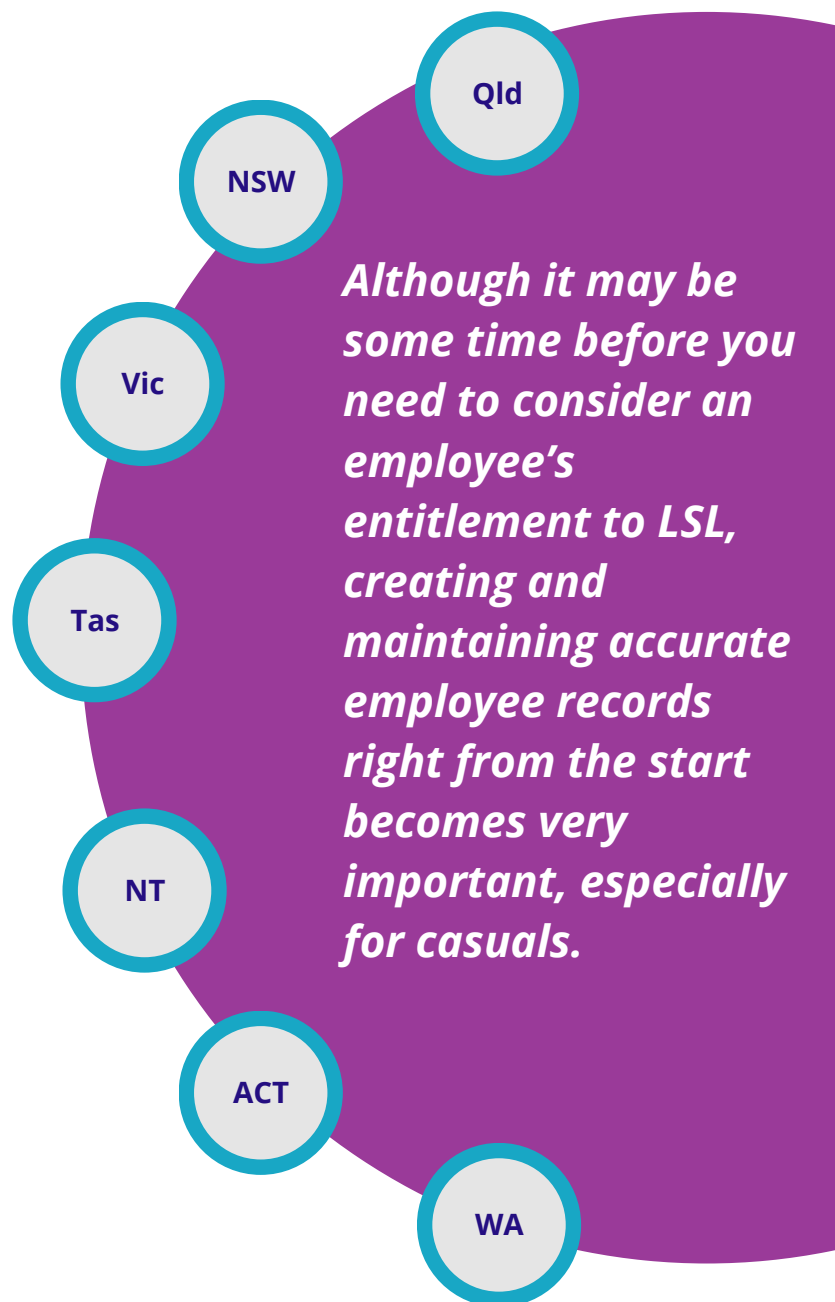
As with workers compensation, LSL is governed by legislation in each individual state.

For **Western Australia**, information on LSL can be found by visiting the Department of Mines, Industry Regulation and Safety.

Generally, the entitlement to LSL accrues after the following periods, but this can be different if the employee resigns, is terminated, is made redundant or passes away:

- After 10 years of continuous employment working in the same business - 82/3 weeks paid leave.

- For every 5 years of continuous employment working in the same business after the initial 10 years - 41/3 weeks paid leave.





# PORTABLE LONG SERVICE LEAVE

Because the type of work most often associated with the building/ construction and commercial cleaning industries means employees may move from employer to employer (and hence not stay with the one for 10 years), they may be eligible for portable long service leave.


Portable long service leave means they will accrue LSL whether or not they change employers.

If you employ eligible employees in these industries, you must register with the portable long service leave authority in your state or territory. You must also let them know when your eligible employees start and end employment so LSL can be paid correctly.

In Western Australia the portable LSL scheme is governed by My Leave (WA)



***If you are an employer who employs workers in the construction industry you may be required by law to register in the Portable Long Service Leave Scheme.***



**Click previous LSL links to explore**



# RECORD KEEPING

**...the essential part of managing your business and human resources**

Good business records help you manage your business, your employees and helps make sound business decisions using data that is relevant to your business. They can also improve the value of your business if you decide to sell it.

Of course, they will also assist in cash flow management!

As an employer, you have a number of record keeping requirements. For example - keeping all employee records for seven years when you fall under the Fair Work Act 2009.

Penalties may apply for failing to meet your record keeping obligations.

The following are just some of the elements to look at when ensuring you keep accurate and relevant records for your business.



# EMPLOYMENT RECORDS

As mentioned, if you employ people you're required to keep accurate and complete time and wages records and issue pay slips to each employee. But this should be seen as minimum practice anyway!

You must keep each employee's time and wages records for at least seven years, make sure they are always accessible for inspection and that they are not altered in any way, unless correcting an error.

Employees must also be given a copy of their employment records should they request it.

Whilst not *all* employee records are legally required to be kept, it is strongly recommended as best practice to keep other employee records such as;

- Employee workplace performance records
- Employee trade certificates or registration certificates
- Any changes to the base contract (e.g. a salary increase)

- Employee resume and job application details

***The number of times you will need to check employee records may be very limited but, when you need to do so, it will be important to your business. Having kept accurate details is business critical.***

Click here

National Employers

Click here

WA State System Employers

# TAX RECORDS

Under Australian taxation law, if you operate a business you must keep records that record and explain all transactions.

Business.gov.au provide a Tax topic for more information on taxation and business.

Chances are you have already engaged your accountant to help with your tax obligations, so raise this topic with them to make sure you are also meeting your employee tax obligations.

In some cases, you might be overlooking Fringe Benefit obligations on some of your employee benefits.

For example, offering your employee a few extra nights away on their next business trip or the company car that they can use for personal use could expose your business to Fringe Benefits Tax obligations.

**STOP!**  
**Employment and Business Tax Record keeping requirements can be very different. Seek advice early.**

***Fringe Benefits Tax can sometimes apply to the rewards or benefits you offer your employees.***

***It is always best to check with your accountant to make sure.***

**Click here to read more**

# TAX RECORDS

How long you need to keep your business tax records will depend on your business structure.

The ATO provides a free, interactive record keeping evaluation tool that will help you understand what records you need to keep, including those related to your workers.

It also evaluates whether your record-keeping practices are adequate.

By law, your tax records must be:

- be kept for at least 5 years (Sole Trader) or 7 years (Company).
- be in English or in a form that can be easily converted
- be in writing (electronic or paper)
- explain all transactions

If you don't keep the right tax records, you can incur penalties

*You can keep invoicing, payment and other business transaction records electronically or on paper. The principles are the same for each, but keeping electronic records will make some tasks easier.*

[www.ato.gov.au](http://www.ato.gov.au)

Click here for  
the ATO Tool

# EMPLOYEE PAY SLIPS

If you have ever been an employee, you'll know the importance of being paid correctly and on-time. If there were mistakes (and ongoing ones), this perhaps damaged the trust you had in your employer.

The legal obligations for providing pay slips is an important, and sometimes overlooked, element of hiring your employees.

The National and WA State Systems provide advice on how to meet your legal and best practice obligations for employee payslips. For example:

- giving all employees a pay slip within one working day of their pay day, even when they're on leave
- making sure the correct information is provided on the pay slip
- issuing the pay slip either electronically or on paper
- use plain English

- give pay slips to staff securely and confidentially in an easily printable format
- ensure your staff can access and print their pay slips in private.

***Not providing a pay slip, or providing one without the required information, can result in a fine for your business.***

Click here

National  
Employers

Click here

WA State System  
Employers

# PRIVACY AND RECORDS

Although some of the Commonwealth privacy laws will not apply to employee records, it is best to consider how you will store, use and provide access to these records regardless.

Fair Work provide a very handy range of topics that help you plan for this type of Workplace Privacy requirement.

A final word about record keeping systems – you can keep employee records in hard copy (paper files) or electronically.

With paper systems, you need to make sure they are protected for confidentiality, fire, flood or any other damage.

This is also one of the reasons why cloud based employee data systems are becoming more and more widespread.

*For electronic systems, such as shared drives, or specialist HR systems – again you need to make sure the information is secure and backed up regularly.*

Privacy  
Commission  
and  
Employment



# FREQUENTLY ASKED QUESTIONS

## ... and myths

### **I pay above the award so does that cover me for overtime and penalties?**

Many 'industrial instruments' (e.g. a Modern Award) allow for an employer to pay a rate above the Award to compensate for additional penalties or allowances, such as overtime or annual leave loadings.

This can also happen as part of the annualisation of a wage in certain instances or through Award flexibility provisions that allow for an employee and the employer to agree on what the higher rate will offset and why.

Other than paying above the high income threshold (as at 1 July 2017, it is \$142,000.), reaching an agreement on what the above award wage covers must follow a prescribed process and not doing so can still expose a business to the minimum conditions applicable under an award, regardless of the higher rate being paid.

The key point is that the employee must be better off overall.

### **Do I need to pay employees for time spent opening/closing a store or attending training outside of normal work hours?**

You must pay your employees for all the time they are required to work, including training *at your request*.

### **Do I have to give employees pay slips?**

Yes, you must give all employees pay slips within 1 working day of pay-day. These can be electronic.

### **Do casual employees get leave?**

Casual employees are entitled to some unpaid leave....and paid Long Service Leave if eligible.





## LINKS TO RESOURCES

We've pulled together some other FREE resources from across various Government, regulatory and advisory bodies in Australia to save you time.

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### Awards and payrates

FWO PACT tool

FWO pay guides

WA guidelines

### PAYG and deductions

Tax withheld calculator

ATO record keeping requirements

### Super

Eligibility tool

Employer information



# STILL GOT QUESTIONS?

When the President of the Fair Work Commission effectively says the Australian industrial relations system is difficult to navigate, we get it that you might still have questions too.

Call us to arrange an initial no-obligation check up of your human resources including:



**Contracts and Policies**



**Records and Compliance**



**Effective Recruitment**



**Performance and Termination**

## Contact us now on



**(08) 6160 6004**



**info@rawhr.com.au**



**www.rawhr.com.au**

