

Fact or Fiction – The Myths of Workplace Laws

NSW Industrial Relations



Fact or Fiction

Workplace Myths

Employers are constantly bombarded with misinformation from various sources about workplace laws

- Employees
- Friends
- Your neighbour, hairdresser or builder mate

It can be tough to decipher what's fact or fiction

Its important that you do your own research and you use all available sources including:

- NSW IR
- FWO
- Industry associations
- Unions or employer organisations
- Your own independent legal advice

Workplace Laws

State and Federal

NSW

- *Anti Discrimination Act 1977*
- *Long Service Leave Act 1955*
- *WH&S Act 2011*
- *WH&S Regulations*
- *Workplace Surveillance Act*
- *Workers Compensation Act 1987*

COMMONWEALTH

- *Fair Work Act 2009*
- *Human Rights Commission Act 1986*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*

Australian Fair Work Act 2009

Provides Detailed Legislation Relating to Workplace Law

Minimum requirements relating to:

- Paid employment including employer obligations relating to Awards/ Agreements and the National Employment Standards
- Record keeping requirements
- Leave entitlements
- General Protections
- Unlawful dismissal
- Notice of termination of employment
- Employment Agreements

Fact or Fiction

Long Service Leave

Fact or Fiction – Your employee said that because they have 5 years of service they are entitled to Long Service Leave

- In NSW the Long Service Leave *Act 1955* states that an employee is entitled to 2 months of paid leave if the employee has provided 10 years of continuous service
- Pro Rata long services applies but only in certain circumstances if an employee has at least 5 years but less than 10 years continuous service

Fact or Fiction

Other Myths Regarding Long Service Leave

Employee can cash out LSL

- No, LSL is only paid out on termination or taken as leave in one continuous period or in two/three or four separate periods depending on the amount available

I can cap the amount of LSL an employee accrues

- LSL continues to accumulate indefinitely while an employee is employed, only completed years of service after 15 years

Casuals don't get Long Service Leave

- From the 9th May 1985, casuals are entitled to LSL

Fact or Fiction

Retail Trading

Do I have to close my Retail business on a restricted Trading Day

- No, not all Retail shops are required to close on restricted Trading Days
- Retail Trading *Act 2008* recognises a number of 'restricted trading days', these are
 - Good Friday
 - Easter Sunday
 - Anzac Day (prior to 1pm)
 - Christmas Day
 - Boxing Day
- Which shops are exempt - Small shops, Schedule 1 Exempt Shops and Exempted Local Government Areas
- More information is available on our website to follow the link click on http://www.industrialrelations.nsw.gov.au/oirwww/Industries_and_Awards/Retail_industry.page

Fact or Fiction

Workplace Myths

I have to give my employee 3 warnings before I terminate their employment

- In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable the Fair Work Commission takes into account many issues, It is essential that the employer provides procedural fairness in a situation relating to the employees performance or conduct, this includes
 - Giving the employee notification and an opportunity to respond
 - Allowing the employee to have a support person present at any performance or disciplinary meetings
 - providing the employee with a warning or warnings, depending on the organisations policies/processes and procedures

Fact or Fiction

Workplace Myths

I pay my employee an annual salary, so does the award or registered agreement does not apply:

- Check your award/agreement for conditions and requirements but an employer may enter into an annual salaried arrangement with an employee, these conditions vary
- Generally an employer is required to enter into a salaried arrangement advising the employee of the various terms that may not apply due to the salaried arrangement
- Depending on the award/ agreement ,the arrangement should not disadvantage the employee and reviewed annually
- If an employee is earning \$142,000 or more then the employer can notify the employee that the Awards/ Agreements does not apply
- The National Employment Standards apply to all employees and may not be contracted out of

Fact or Fiction

Workplace Myths

I have to put my staff on a three month probation period

- An employer should choose a probation period of a specific length and notified to the employee, keeping mind that an employee cannot make an unfair dismissal complaint unless they have served a minimum employment period of either:
 - 6 months (15 or more employees) or
 - 12 months (fewer than 15 employees)
 - 21 days to lodge application
- NOTE – Check any agreements or award conditions

Fact or Fiction

Workplace Myths

I offer my part time employees a minimum 8 hours work a week but I get them to work when I need them up to 38 hours some weeks but I do not pay overtime:

- Some awards/agreements require an agreement at the start of employment with a part time employee setting out the hours to be worked each day, the starting and ceasing times each day and the days of the week that the part time employee is to work
- This agreement may be varied by mutual agreement and recorded in writing
- If no agreement to vary by consent overtime provisions may apply
- Check your award/agreements types of employment, hours and overtime clauses

Fact or Fiction

Workplace Myths

I pay my staff weekly so I only need to give one weeks notice if I terminate their employment

- Notice periods are not based on pay cycles but rather the length of continuous service with the employer and if an employee is over 45 years of age a weeks extra notice is required if they have at least 2 years of continuous service
- Notice periods by employers are based on the National Employment Standard (see next slide for notice periods)

Fact or Fiction

Notice of Termination / Payment in Lieu

Employee's period of continuous service with employer	Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

Note: Increase the period of notice by 1 week if the employee is over 45 and has completed at least 2 years continuous service.

Notice of termination by an employee is generally the same except there is no requirement to provide additional week. Please check applicable Awards/ Agreements which regulates how much notice an employee is required to provide.

If no notice given employer can withhold required notice not worked from monies owed including an NES entitlement

Fact or Fiction

Annual Leave

If you don't use it, you lose it!!

- This is not the case, an employee accumulates leave indefinitely for as long as they are employed. Annual Leave is paid out on termination, personal leave is not!

An employee must have 3 months service before they are entitled to take any personal leave or annual leave

- Personal leave and annual leave is accrued for ordinary hours worked and an employee is entitled to use accrued personal or annual leave at any time, conditions do apply though; e.g. remembering an employees obligation to provide notice as soon as practicable and reasonable evidence if requested for personal leave and that annual leave requests cannot be unreasonably refused

Fact or Fiction

Annual Leave

My employee just started 4 weeks annual leave and had to have his appendix taken out and his mate told him it should not be annual leave !!

Annual Leave or Personal Leave?

- If an employee is on approved annual leave and there is another form of paid leave available they are deemed not to be on annual leave by the Fair Work Act 2009 and would be able to use their accrued personal leave instead
- Do you have a policy that covers reasonable notice and evidence?

Fact or Fiction

Close Down Periods

All my employees are taking leave over the Christmas and New Year period because I'm closing down during this time

- Award or agreement free employees can be reasonably directed to take annual leave during a close down
- If a Awards/ Agreements applies please check for further details such as notification requirements and leave in advance of accrual

Fact or Fiction

Compassionate Leave

My employees pet dog passed away and has asked to take compassionate leave

- Compassionate leave is a National Employment Standard that applies on the death or case of a serious life-threatening illness or injury to an immediate family member or a member of the household
- The definition of an immediate family member does not include the family pet, nor are other relatives included if they do not live in the same household

Fact or Fiction

Casual Employees

An hour into a casual employees shift I send them home because its quiet

- Refer to your award/agreement as most have a minimum engagement period for casual engagements

My employees don't want their pay slips so I stopped providing them, is this ok?

- An employer is required to provide employees with a payslip within 24 hours of paying their employees(can be electronic)

Fact or Fiction

Workplace Myths

I asked my employees to wear a uniform, do I pay them a uniform allowance?

- Please refer to your Awards/ Agreements, an employer may need to provide or pay an allowance if the wearing of a uniform is required
- Some Awards/ Agreements or agreements also require the employer to launder the uniform or pay an allowance to the employee

Fact or Fiction

WORKPLACE MYTHS

I have employees that I class as permanent casuals

- A contradiction, an employee can not be a permanent casual, they must be deemed either a full time, part time or casual employee
- Check your Awards/ Agreements as many awards provide for specific conditions when employing casuals

I cannot stop my staff from taking smoking breaks

- Awards/ Agreements may require employers to provide an unpaid break if the employee works sufficient number of hours
- there is no mention in Awards/ Agreements regarding the taking of smoking breaks, thus an employer should provide staff with policy relating to the taking or no taking of smoking breaks

Fact or Fiction

Workplace Myths

Can I ask my employees to come in early and prepare for the working day but I pay them from when my shop opens?

- An employee is entitled to payment for any time worked, so if you require an employee to come in 15 minutes before your shop opens so that they can prepare stock, then they are actually working during this time and entitled to be paid for the time worked

I have after hours meetings/training sessions where I supply the pizza but I don't pay them for attending

- For those employees that are covered by an award/ agreement there may be a requirement to pay overtime for the attendance at meetings and training sessions outside of ordinary hours

Fact or Fiction

Workplace Myths

I've secretly installed video surveillance in the workplace to record my employees without my employees knowledge

- Employers in NSW must comply with the Workplace Surveillance Act 2005, which regulates both overt and covert surveillance in the workplace, generally employers can have overt surveillance but employees must be given written notice of 14 days of the particular surveillance, including computer (email, internet) Camera (video) and tracking (vehicles or thing)

Fact or Fiction

Trial Work

I need a new employee but I want to see how they go in the job for a couple of days before I start to pay them

- There is no such thing as unpaid trial work
- Employers are not permitted to offer unpaid trial work to prospective employees
- Employers can make a request to a potential employee to demonstrate a skill required for a position, example, ability to make a coffee (barista)
- If work is performed during a trial period, all work must be paid at the appropriate rate of pay, including any training or attendance at meetings
- Employees are also entitled to other employment conditions provided for under the NES and an applicable Awards/ Agreements or enterprise agreement

Fact or Fiction

Unpaid Work

I get enquiries from individuals offering to work for nothing so they can get some experience, is it ok to do this?

- Unpaid work may only be performed if it is associated with a recognised educational institution or is a genuine volunteering arrangement

Unpaid work may include:

- work experience, such as high school students or university students
- vocational placements associated with an educational course requirement
- Volunteering, generally in charitable and community service organisations
- Unpaid internships
- Note: If work performed is not a prerequisite of an educational course, then it cannot be unpaid.

Where to Go for Further Information



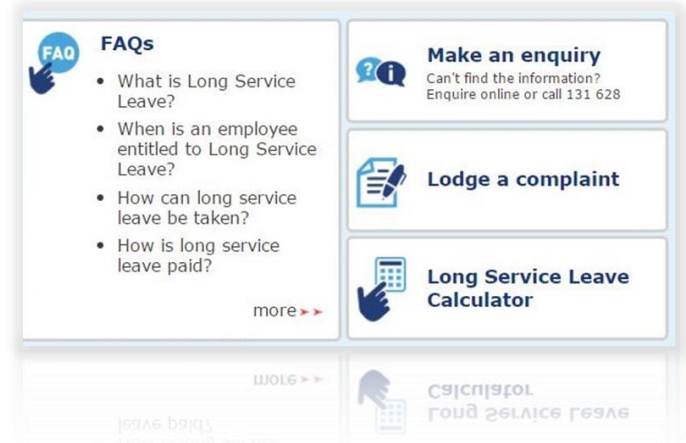
Our Website

NSW Industrial Relations - 13 16 28



- Call us on 13 16 28
- Assistance with Taxi enquiries
- Easy way to lodge a complaint by using our on-line application form
- Long Service Leave calculator for getting to the right summation

www.industrialrelations.nsw.gov.au



Our Customer Service and Education

Proactive Compliance Team



- Workshop Program FREE face to face sessions in Metro and Country locations including
 - Rights and Responsibilities for Employers in NSW
 - Paying Employees in NSW
 - Long Service Leave



- Live and recorded webinars
 - Each month 3 sessions are provided at different times to suit
 - Recorded webinars are available for training and support
 - Many topics on-line now ready to assist

Useful Contacts

Details

Fair Work Ombudsman - 13 13 94

- Fact Sheets, templates, pay tools and other resources for employers

www.fairwork.gov.au

Fair Work Commission

- Awards/ Agreements, Fair Work Act 2009, Enterprise Agreements & Unfair Dismissals

www.fwc.gov.au

Long Service Corporation - 131 441

- Portable Long Service Leave scheme for the Building and Construction industry and the Contract Cleaning Industry

<http://www.longservice.nsw.gov.au/>

SafeWork NSW - 131050

www.safework.nsw.gov.au

Anti Discrimination Board of NSW - (02) 9268 5544

www.antidiscrimination.justice.nsw.gov.au