

Employing Staff in NSW A guide to laws covering employment in NSW



All New South Wales employers and employees need to know the federal and NSW industrial relations laws that apply to their workplace, and their rights and responsibilities under these laws.

The following information is a guide for NSW employers and employees only.

Which laws apply to my workplace?

To find out which federal or state industrial relations laws apply in the workplace, you need to determine whether the employer is a 'constitutional corporation'.

What is a constitutional corporation?

A constitutional corporation is a body incorporated under an Australian law and engaged in, or substantially engaged in, trading or financial activities. Generally, these are companies which carry out commercial activities with a view to earning revenue. Incorporated associations and co-operatives may also be constitutional corporations.

A trading corporation is one which buys, sells, exchanges or barter goods or services or, more generally, is in the business of commerce. Such trading activities must form a substantial or significant proportion of these activities.

A financial corporation is one which deals substantially or extensively in commercial dealings in finance. Financial activities may refer to borrowing or lending, banking or insurance and also to providing management and advisory services in relation to financial matters.

Federal industrial relations laws apply to all employers defined as constitutional corporations.

Sole traders, partnerships and trusts

If an employer is a sole trader or a partnership, this means that the employer is unincorporated. Similarly, if the employer is a natural person acting as a trustee, then the employer is unincorporated. In both these situations the employment relationship does not involve a constitutional corporation. NSW industrial relations laws continue to apply to these employers.

What happens if my workplace employs staff under a NSW award or enterprise agreement?

Unincorporated employers

A sole trader, partnership or trust with employees covered by a NSW state award or agreement remains in the NSW industrial relations system. NSW industrial relations legislation continues to apply and employees remain under the NSW awards.

Incorporated employers

An employer which is a constitutional corporation with employees covered by a NSW award moved to the federal industrial relations system on March 27 2006. The NSW award or agreement becomes a federal transitional agreement.

In 2010 all employees will be covered under new federal modern awards, under the federal government Forward with Fairness industrial relations laws.

What happens if my workplace employs staff under a federal award?

Unincorporated employers

An unincorporated employer that is operating a business in NSW under a federal award prior to March 2006 will be covered by NSW



industrial relations laws after a five year transitional period.

Incorporated employers

An incorporated employer operating in NSW with employees covered by a federal award remains in the federal industrial relations system.

Which NSW laws still apply to my business?

Several NSW laws continue to apply to all businesses operating in NSW, regardless of their industrial relations coverage. These include NSW laws on occupational health and safety, workers compensation, method of payment of wages, deductions from wages, public holidays, long service leave, jury service, trading hours and anti-discrimination.

Inspectors who are authorised under NSW industrial relations and occupational health and safety laws are permitted by NSW law to inspect all employers' employment records, including time sheets, wages books and leave records.

What will it cost if an employer decides to incorporate?

Costs associated with incorporation include registration fees, legal and accounting expenses, as well as additional paperwork.

For more information, visit the Australian Securities and Investments Commission website at www.asic.gov.au.

What are the benefits of NSW awards?

The NSW industrial relations system provides a level playing field for wages and conditions. Employers can resolve disputes quickly and efficiently, through access to the NSW Industrial Relations Commission.

The OIR provides a range of services to help employers understand their rights and obligations under NSW industrial laws.

Small business workshops

State-wide workshops are offered on a range of industrial relations and human resource topics to help business owners and managers.

Free workshops include employer rights and responsibilities under industrial relations legislation.

They also cover the impact of federal industrial relations changes and specific employment issues.

Other topics include recruiting and retaining staff, developing workplace policies and managing staff performance.

For more information visit the OIR website.

Free online services

The OIR website provides a number of free online services:

- **NSW Awards Online** provides easy access to award information including pay rates and leave entitlements.
- **Pay Rate Updates** lets you subscribe online and receive email alerts on changes to NSW pay rates and award conditions that affect your workplace
- **Check Your Pay** helps you calculate wages.
- **Leave calculators** - helps you calculate annual leave and long service leave.
- Online *sample pay slips* help employers create their own employee pay slips.
- **Your Workplace** Online - subscribe to this quarterly e-newsletter to keep you up-to-date with workplace issues.

Need help?

For assistance or additional information, please contact:

Office of Industrial Relations
Ph: 131 628 (local call charge in NSW)
TTY: 1800 555 677
www.industrialrelations.nsw.gov.au

Fair Work Online
Federal wages and work conditions
Ph: 13 13 94
www.fairwork.gov.au

