

Services available from the Office of Industrial Relations (OIR)

The OIR's Advisory Service provides businesses with information to work out the best employment arrangement for their workplace. To find out more, or for information about rights and responsibilities under NSW awards, telephone 131 628.

Free online services at www.industrialrelations.nsw.gov.au

- NSW Awards Online* provides easy access to full award text, including conditions of employment, pay rates and leave entitlements. You can also download copies of awards.
- Pay Rate Updates* give you instant email alerts on changes to NSW pay rates and award conditions that affect your workplace.
- Check Your Pay* helps you to calculate wages and other entitlements. You can check the amount to be paid for actual work done or calculate long service leave and annual leave entitlements.
- Sample payslips are available in Word and PDF format.
- Online newsletters, such as *Your Workplace Online*, help you to keep up-to-date on industrial relations issues that affect your workplace.

Business workshops

State-wide workshops are offered on a range of employment-related topics to help business owners and managers. Free workshops include employer rights and responsibilities under the NSW industrial relations system, the impact of federal industrial relations changes and specific industry awards. Other topics include recruiting staff, developing workplace policies and managing staff performance.

Free publications

The OIR produces a range of brochures on basic employment rights and responsibilities, some in community languages. The OIR also publishes best practice guides and industry-specific handbooks.

For more information about these and other services available, contact the OIR at:

Telephone	131 628 (local call charge in NSW)
For hearing impaired people only	TTY Service 1800 555 677
Facsimile	(02) 9020 4741
Email	go to the feedback section of our website
Website	www.industrialrelations.nsw.gov.au
Mailing address	Office of Industrial Relations McKell Building, 2-24 Rawson Place, Sydney NSW 2000

Other Useful Contacts for Employers

For information about...	Contact	
Awards, pay rates and conditions of employment	Office of Industrial Relations	13 16 28
Apprentices and trainees	Department of Education and Training	13 28 11
Business licences	Office of Fair Trading	13 32 20
Federal awards and agreements	Workplace infoline	1300 363 264
Health and safety at work	WorkCover NSW	13 10 50
Business Advisory Service	Department of State and Regional Development	1300 650 058
Payroll tax	Office of State Revenue	1300 139 815
Tax (including FBT & BAS)	Australian Taxation Office	13 28 66
Superannuation	Superannuation Hotline	13 10 20

Disclaimer

This publication is intended to be a general guide only. All due care has been taken in its preparation, and the information is believed to be current at the date of publication.

The NSW Department of Commerce provides no warranty of accuracy, reliability or completeness of, and accepts no responsibility for errors in or omissions from, any loss or damage resulting from reliance on (in whole or in part) this information. The NSW Department of Commerce does not accept responsibility for any action taken in reliance on the information contained in this publication.

The NSW Department of Commerce recommends that you read this publication in conjunction with an authorised copy of the appropriate award and industrial relations legislation. An employer or employee should not act on the basis of any of this information without first seeking independent advice from a suitable adviser.

Office of Industrial Relations

Dear Employer

Inspectors from the Office of Industrial Relations (OIR) are currently inspecting workplaces in your area and industry to ensure that employers and employees are complying with NSW industrial relations laws.

Your workplace has been selected for inspection.

As part of this inspection, this booklet is being supplied to you to assist you to meet your obligations as an employer under NSW industrial relations laws. I encourage you to read all of this information.

As part of this inspection, an OIR inspector will interview you about your employment records and the employment conditions in your workplace. The OIR inspector may also interview some or all of your employees.

By law, you are required to:


- give the OIR inspector access to your workplace
- answer the questions asked by the inspector
- provide any employment records requested by the inspector.

Failure to do so may result in the OIR taking legal action against you.

You are entitled to request any OIR inspector to produce his/her official certificate of authority.

If you have any questions concerning the information in this booklet or the inspection, please speak to the inspector who is inspecting your workplace, or contact the OIR using the details shown on the opposite page.

Yours sincerely



Pat Manser
Deputy Director-General

Information for employers about OIR inspections

The NSW industrial relations system covers most unincorporated businesses in NSW (e.g. sole traders and partnerships) as well as some incorporated businesses operating in NSW (e.g. some charities and not-for-profit organisations). Businesses may need to seek legal advice to determine whether NSW industrial relations laws apply to them.

The role of the Office of Industrial Relations

The Office of Industrial Relations (OIR) is part of the NSW Department of Commerce. It is responsible for ensuring that employers and employees comply with NSW industrial relations laws. These laws cover matters such as minimum pay rates, conditions of employment, leave entitlements and employment records.

Why are workplaces inspected?

Inspectors may visit a workplace as part of an investigation into an alleged breach of NSW industrial relations laws by a current or former employee. Inspectors also undertake regular inspections of workplaces in key industries and regions throughout NSW.

Why is my workplace being inspected?

Each year, thousands of employees lodge complaints about their current or former employers. This information is used by the OIR to plan workplace inspections across a wide range of industries and occupations in NSW.

Your workplace has been selected for inspection, from the information known about your industry, occupation and geographic location.

Who has the power to inspect employment records?

Every Inspector carries a certificate of authority. You are entitled to request the Inspector to produce his/her official certificate of authority.

Other Government inspectors (including Australian Taxation Office and WorkCover NSW inspectors) also have rights to inspect workplace records. In certain circumstances, authorised union officials also have rights to inspect employment records.

What happens in a workplace inspection?

An Inspector will first contact the employer or person in charge at the workplace. Information may be provided about the purpose of the inspection.

Usually, a workplace assessment will be conducted during the Inspector's first visit to your workplace.

You will be interviewed about the employment records and employment conditions in the workplace. The Inspector may also interview some or all of your employees. If requested by the Inspector, by law you are required to provide your employment records.

Depending upon the result of the workplace assessment, you will be advised by the Inspector of any action that is to be taken.

How long will a workplace inspection take?

Usually, the workplace assessment will take up to an hour. The Inspector may schedule additional meetings after this to obtain further information, or to clarify information that you have already provided.

What are the benefits of being inspected?

Workplace inspections ensure that employers are aware of and understand their responsibilities to their employees. Through these inspections, employers and employees gain more information about their rights and entitlements.

Workplace inspections protect the legal rights of employees and ensure that employers who are complying with NSW industrial relations laws are protected from unfair competition from unscrupulous employers.

Will I be told about the outcome of the inspection?

You are encouraged to stay in contact with the Inspector who is undertaking your workplace inspection. If compliance issues are identified in your workplace you will be contacted by an Inspector. Usually, this will occur within six to eight weeks of the inspection.

Will my employees find out about the workplace inspection?

Yes. In some cases, Inspectors may need to interview employees to confirm employment records.

Your employees will not be advised formally of the outcome of the workplace inspection. Under NSW's freedom of information laws, employees can seek to obtain information relating to their employment records. You will be contacted if an employee requests information.

Who else will find out about the workplace inspection?

The OIR will not disclose information to any third party, except where obliged by State or Commonwealth law. The OIR will co-operate with any lawful investigation undertaken by another Government agency. Your details are not provided to unions, other employers or employer associations.

What happens if an Inspector identifies a breach of a law or award?

Inspectors have general powers to investigate any suspected breach of NSW industrial relations legislation or an award.

If a breach is identified, the Inspector may prosecute you as an employer. If this occurs, you will receive a formal document called a 'Notice to Employer' setting out the alleged breaches.

If the Inspector considers that a breach is relatively minor in nature, the Inspector may instead issue a Penalty Infringement Notice (an on-the-spot fine), direct you to fix the breaches and/or formally caution you.

How can I check my workplace's compliance with NSW industrial relations laws?

As an employer, you have the responsibility to comply with NSW industrial relations laws.

The remainder of this booklet describes the major legal responsibilities of employers. You should read and understand all the information provided in this booklet.

At the back of this booklet, a checklist is provided to assist you to check your workplace's compliance with NSW industrial relations laws.

Where can I get more information about NSW industrial relations laws?

Information concerning pay rates and employment conditions is available from the Office of Industrial Relations on 131 628, or at our website at www.industrialrelations.nsw.gov.au.

Information concerning this workplace inspection can be obtained from the Inspector dealing with your workplace.

If you are unsure about your rights and responsibilities, you may wish to obtain advice from your employer association, accountant or solicitor.

Information about NSW Awards

Awards establish rights and obligations for employers and employees in the workplace.

What is an award?

An award sets out your rights and obligations as an employer. The award will also outline your employees' rights and responsibilities. There are many different types of awards to cover different industries and occupations.

Awards deal with conditions of employment such as:

- pay rates
- hours of employment
- penalty rates, loadings, allowances
- leave entitlements
- employment protection provisions
- part-time and casual work.

How are NSW awards made?

In NSW, the *Industrial Relations Act 1996* permits the NSW Industrial Relations Commission (the 'Commission') to make awards specifying the conditions of employment for employees doing particular types of work. Most commonly, this occurs because the organisations representing employers or unions have applied to the Commission to have an award made. An award can also be made to settle an industrial dispute.

Who is covered by a NSW award?

A NSW award covers all employers and employees in the industry or occupation to which it relates, whether or not they were parties to the making of the award.

Awards must be displayed in the workplace

Because an award sets out the rights and obligations of employers and employees, section 361 of the *Industrial Relations Act 1996* requires an employer covered by an award to exhibit a copy of the award in a conspicuous place in the employer's premises. As an employer, it is your responsibility to ensure that an award is displayed in your workplace.

Which award applies to a workplace?

Every NSW award has a clause which sets out the industry or occupation covered by the award.

Can I contract out of an award?

Even if an employee agrees, an employer cannot 'contract out' of an award. The only exception is where an enterprise agreement approved by the NSW Industrial Relations Commission covers the workplace.

How can I obtain a free copy of an award?

You can download the full award text from Awards Online at: www.industrialrelations.nsw.gov.au Alternatively, copies of awards may be purchased from OIR by telephoning 131 628 during business hours. Many employer associations also provide awards to members.

What about federal awards?

Employees may be covered by federal awards and agreements. For more information, telephone the Workplace Authority on 1300 363 264.

Information about paying employees

The *Industrial Relations Act 1996* requires employers to issue pay slips to employees.

Employees must be paid in money

Payment of remuneration (including overtime and other payments) must be made to an employee in money.

The employee must be paid by cash unless the employee has authorised you to pay by cheque or by electronic funds transfer. Some awards also authorise you to pay employees by cheque or electronic funds transfer.

When are employees to be paid?

Awards can specify the interval for which an employer must pay remuneration. However, if requested by an employee, you must pay the remuneration at least each fortnight.

What information must be supplied to employees on a pay slip?

As an employer, you must provide employees with pay slips containing the following information:

- the full legal name and ABN of the employer
- the name of employee
- the classification of the employee under any applicable award
- the date on which the payment was made
- the period of employment to which the payment relates
- any amount paid as overtime or enough information to allow the employee to calculate the amount of overtime
- the gross amount of remuneration (including overtime and other payments)
- the amount deducted for taxation purposes
- any amount deducted as employee contributions for superannuation purposes
- particulars of all other deductions
- net amount paid.

Sample pay slips are available in Word and PDF format from the OIR website at www.industrialrelations.nsw.gov.au

Deductions from an employee's pay

Payment of remuneration to an employee is to be made in full. However, you may make deductions from an employee's pay if authorised in writing by the employee and where the payments are principally for the benefit of the employee. Awards and other legislation may also authorise you to make deductions from an employee's pay (eg child support payments, court orders etc).

How employment records must be kept

All employment records must be legible and in English, in a paper or electronic format (computer file).

How long must employers keep employment records?

You must keep employment records for at least six years.

If the business is sold, what employment records must an employer give to the new owner?

The new owner must be given all records outlined above relating to transferred employees. The new owner must keep these records and the former owner must keep a copy of the records for a period of at least six years after they were made.

Information required to be kept by employers

The *Industrial Relations Act 1996* requires employers to keep specified employment records.

General records

For each employee, you must keep records which detail:

- the full name of employer and ABN
- the full name of employee
- the classification of the employee under any applicable award
- whether the employee is employed full-time or part-time
- whether the employee is employed on a permanent, temporary or casual basis
- if the employee is an apprentice or trainee within the meaning of the *Apprenticeship and Traineeship Act 2001*, the date the person became such an apprentice or trainee
- date on which the employee was first employed by the employer
- if the employee's employment has been terminated, the date of termination.

Remuneration and hours worked

For each employee, you must keep records which detail:

- the number of hours to be worked per week, per day or other period, as prescribed by the award
- if the award limits the daily hours of work and provides for the payment of daily overtime, the number of hours worked by the employee during the day and the times of starting and ceasing work
- the rate of remuneration per week, day, hour or other period at which the employee is paid if this is prescribed by the award
- if piece work is prescribed by the award, the number and description of pieces made by the employee and the rate per piece at which the employee is paid
- the gross amount of remuneration paid to the employee and any deductions made
- any other particulars which are necessary to show that the requirements of the award relating to remuneration paid and hours worked are being met.

Leave records

Legislation and awards entitle employees to certain types of paid and unpaid leave from employment, such as annual holidays, sick leave and parental leave.

You must keep the following records in relation to your employee's leave entitlements:

- any leave taken by the employee
- the employee's entitlement from time to time to that leave
- the accrual of that leave.

Superannuation contributions

If you are required to make superannuation contributions for the benefit of an employee under an award, you must keep the following records:

- the amount of contributions made*
- the period over which contributions are made*
- when the contributions are made*
- the name of the fund or funds to which the contributions are made
- the basis on which the employer became liable to make the contributions (including particulars of any relevant election by the employee).

* These records are not required in the cases of contributions to a defined benefit superannuation fund within the meaning of the Occupational Superannuation Standards Regulations of the Commonwealth Government.

Information about pay rates

Most awards set minimum pay rates for work. If an employer pays less than this rate, the OIR may prosecute the employer for a breach of the award.

Pay rates provided with this booklet

When the OIR commences an inspection of a workplace, the Inspector usually provides a copy of this booklet and a schedule showing the current pay rates applying in the workplace (sometimes called a 'pay rates summary').

If you have not received a copy of the current pay rates, please:

- contact the Inspector who has visited your workplace
- telephone the Office of Industrial Relations on 131 628 to request a copy of current pay rates.

What to do with the pay rates summary provided by the Inspector

First, you should check to see if name of the award on the pay rates summary matches the name of the award you are displaying in your workplace. If it is a different award, you should discuss this with the Inspector as a matter of urgency.

Second, you should check to ensure that your employees are correctly classified. While the pay rates summary may contain a brief description of the classifications, you should consult the award for a full definition of the duties performed by employees in each classification.

How to use the pay rates summary

The following is an example of a pay rates summary applying to kindergartens and childcare centres.

MISCELLANEOUS WORKERS KINDERGARTENS AND CHILD CARE CENTRES (STATE) AWARD

Rates Summary

Effective from the first full pay period to commence on or after 1 March 2008

Description	Weekly	Part Time Per Hour	Casual Per Hour	Plus Holiday Pay
Support worker	569.40	14.98	17.23	1.44

This box shows the classification.

The 'weekly rate' is the full-time rate of pay.

This is the hourly rate for a part-time employee multiplied by the number of hours worked.

Add these two figures to get the hourly rate for a casual employee, then multiply by the number of hours worked.

Shows the date from which the pay rates apply.

Once you have worked out the correct rate of pay for each employee, it is necessary to check their entitlements to allowances, overtime pay, penalty rates and loadings.

Information about annual holidays for employees

What is an annual holiday?

Under the *Annual Holidays Act 1944*, most full-time and part-time employees in New South Wales are entitled to a minimum of four weeks paid leave per year. In this Act, an employee is defined as a person who is employed, whether on salary, wages, piecework rates or paid wholly or partly by commission.

When does annual leave become available?

Annual leave falls due on the anniversary of when the employee's employment originally commenced.

When can annual leave be taken?

Annual leave must be taken within six months of the date on which it becomes due. If you and the employee agree, annual leave may be taken in advance.

Annual leave may be taken in one or two periods. One period must be not less than one week in duration and the other period must not be less than three weeks in duration. Leave may be taken in two, three or four separate periods or in advance if you and the employee agree.

If you are directing an employee to take annual leave, you must give the employee one month's notice.

What rate of pay is paid to full-time and part-time workers taking annual leave?

The employee is entitled to be paid their gross wage (not including overtime), plus any shift allowances and weekend penalties for the ordinary time that would have been worked if annual leave had not been taken. Bonuses paid to employees who are otherwise paid in excess of \$144,000 per annum are not included.

If commissions or incentive payments are paid, they are averaged over the previous 12 months and added into the annual leave pay. This is called the employee's 'ordinary pay'.

What is the position of casual employees?

Casual employees are paid an additional payment or loading on top of their casual hourly rate in place of an annual leave entitlement. Some awards may vary the calculation of this payment.

What payment is due for annual leave when a person leaves their employment?

If the period of employment is more than 12 months, payment is made for the balance of leave accumulated and not taken up to the last anniversary of the commencement of employment, plus a pro rata payment for leave accumulated after that date.

If the period of employment is less than 12 months, a pro rata payment is calculated from the commencement date of employment is paid.

A pro rata annual leave payment is calculated by multiplying the number of weeks worked since the anniversary date (or the date of commencement) by the gross weekly wage, then dividing that amount by 12.

Can a lump sum payment be made instead of annual leave?

No. The *Annual Holidays Act 1944* prohibits any payment instead of taking annual leave, except on termination of employment, regardless of any agreement between you and the employee.

What happens if a public holiday occurs during annual leave?

If a public holiday falls during a worker's period of annual leave, an extra day must be given or be added to the employee's annual leave balance.

Other types of leave entitlements

Sick Leave

Sick leave is available to most full-time and part-time employees covered by NSW awards, once a worker has completed a period of qualifying service with an employer.

Sick leave is an entitlement provided by an award. As a guide, most employees are entitled to a minimum of five days sick leave each year, which can be used when the employee is too ill to work. In some instances, the employee will be required to provide a medical certificate in order to be paid sick leave.

Long Service Leave

The NSW *Long Service Leave Act 1955* provides an entitlement to paid long service leave to full-time, part-time and casual employees in New South Wales, once the employee has completed an unbroken period of 10 years with the one employer.

The minimum entitlement for long service leave is two months paid leave after 10 years of service, and one month of paid leave for each additional five years of service.

Carer's Leave

Carer's leave is available to most employees covered by NSW awards. Carer's leave is leave an employee can take to care for a family member who is sick. If an employee takes carer's leave, he or she must be responsible for the care of the person who is sick. This type of leave is paid leave.

Bereavement Leave

Bereavement leave is available to most employees covered by NSW awards. Bereavement leave is leave that an employee can take when a family member dies. Some awards require the employee to attend the funeral or impose other conditions when taking this leave.

Bereavement leave is also sometimes called compassionate leave. This type of leave is paid leave.

Parental Leave

The NSW *Industrial Relations Act 1996* provides employees with minimum entitlements to parental leave. Awards, enterprise agreements and contracts of employment may provide additional entitlements. Parental leave is unpaid leave, unless otherwise specified in an award or enterprise agreement.

Parental leave taken by an employee can be:

- maternity leave, in connection with a pregnancy or the birth of a child
- paternity leave, for male employees whose spouse is having a child
- adoption leave, for parents who have adopted a child under 18 years of age.

Employees under NSW State awards may request their employer to allow them:

- additional short paternity leave of up to a total of eight weeks
- to extend their parental leave by a further continuous period of up to 12 months
- to return to work on a part-time basis until their child reaches school age.

An employer may only refuse a request on reasonable grounds related to the effect on their workplace or business.

A full time or part-time employee qualifies for parental leave after completing at least 12 months continuous service with the employer. A casual employee qualifies after working on a regular and systematic basis for at least 12 months, with a reasonable expectation of ongoing employment.

An employee is entitled to a maximum of 52 weeks leave.

Employer's Checklist

The OIR recommends that you check your workplace's compliance with NSW industrial relations laws. The following checklist covers some of the major issues checked regularly by OIR Inspectors when investigating employers.

Award display

- You possess a current copy of every award applying in the workplace.
- Each award is displayed in a conspicuous place.

Pay slips

- Pay slips are provided to all employees.
- Pay slips are provided to employees at the time of payment.

Every pay slip contains the following information:

- the name and ABN of the employer
- the name of employee
- the classification of the employee under any applicable award
- the date on which the payment was made
- the period of employment to which the payment relates
- any amount paid as overtime or enough information to allow the employee to calculate the amount of overtime
- the gross amount of remuneration (including overtime and other payments)
- the amount deducted as taxation
- any amount deducted as an employee contribution to superannuation
- particulars of all deductions
- net amount paid.

General employment records

For each employee, you have records detailing:

- the full name of employer and ABN
- the full name of employee
- the employee's classification under any applicable award,
- whether the employee is employed full-time or part-time
- whether the employee is employed on a permanent, temporary or casual basis
- if the employee is an apprentice or trainee under the *Apprenticeship and Traineeship Act 2001*, the date the person became an apprentice or trainee
- the date on which the employee was first employed by the employer
- if the employee's employment has been terminated, the date of termination.

PLEASE NOTE

OIR inspectors also regularly check pay rates, hours worked and allowances paid to employees.

Time and pay records

For each employee, you have records detailing:

- the number of hours worked per week, per day or other period, as prescribed by the award
- if the award limits the daily hours of work and provides for the payment of daily overtime, the number of hours worked by the employee during the day and the times of starting and ceasing work
- the rate of remuneration per week, day, hour or other period at which the employee is paid if this is prescribed by the award
- if piece work is prescribed by the award, the number and description of pieces made by the employee and the rate per piece at which the employee is paid
- the gross amount of remuneration paid to the employee and any deductions made
- any other particulars which are necessary to show that the requirements of the award relating to remuneration paid and hours worked are being met.

Leave records

For each employee, you have records detailing:

- any leave taken by the employee
- the employee's entitlement from time to time to that leave
- the accrual of that leave.

Superannuation contributions

If you are making superannuation contributions for the benefit of an employee as a result of an obligation under an award, you are keeping the following records:

- the amount of contributions made
- the period over which contributions are made
- when the contributions are made
- the name of the fund or funds to which the contributions are made
- the basis on which the employer became liable to make the contributions (including particulars of any relevant election by the employee).

Important information for employers of young people

You must now comply with the *Industrial Relations (Child Employment) Act 2006*. If you make an individual or collective agreement with one or more workers under 18 years of age, you must provide, on aggregate, remuneration and entitlements at least equivalent to the comparable NSW award or legislation.

For more information visit the OIR website.