

TAKING ON A NEW EMPLOYEE *checklist*





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TAKING ON A NEW EMPLOYEE CHECKLIST

To help you we have provided the checklist that [business.gov.au](https://www.business.gov.au) has available on its website. Use this checklist to help guide you through the federal and state laws that can apply when you're employing people. You can find more information on their website:

<https://www.business.gov.au/info/run/employ-people/recruitment-hiring-employees/taking-on-an-employee-checklist>

What kind of employment are you offering?

Before you begin recruiting, you should consider how busy the job you need to fill will be, and how long you think you'll need to employ someone for.

Depending on the requirements of the job, you might consider taking on:

- permanent employees, whether full-time or part-time
- casual employees
- trainees or apprentices
- contractors
- temporary employees through an employment agency or labour hire firm.

Employing people using different working arrangements can keep your workplace flexible while also meeting your business needs.

Is your worker an employee or contractor?

To work out what your obligations will be as an employer, it's important to know whether your workers are employees or independent contractors. The definitions of 'employee' and 'contractor' can vary across government regulations and also from state to state, and can have different consequences for you as employer.

For example, someone defined as a contractor for tax and super purposes may be an employee for workers' compensation insurance. And in some cases, workers considered to be contractors may be employees for superannuation purposes.

To make sure you're doing the right thing as an employer, check the following:

For wages and entitlements

- Read the Fair Work Ombudsman's advice on [independent contractors](#).
- 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.
- Use the ATO's [Employee/contractor decision tool](#) to find out whether your worker is an employee or contractor for tax and super purposes. There are penalties if you don't meet your pay as you go (PAYG) withholding and superannuation obligations for a worker.

Can your employee legally work in Australia?

As an employer, it's your responsibility to make sure your workers can legally work in Australia. This includes employees you source from a contractor or labour hire company, for both paid and unpaid work.

Employers may face penalties for taking on an illegal worker, even if they didn't know the worker was not allowed to work in Australia.

Providing a [tax file number \(TFN\)](#) is not proof of permission to work in Australia.

Can legally work

- Australian citizens, permanent residents and New Zealand citizens are legally allowed to work in Australia.
- Australian visa holders are also legal workers if their visas allow them to work. Some visas only allow certain kinds of work. They may only be able to work for a certain employer, for a certain number of hours, or for a certain time period.

Can't legally work

- Some visas don't allow the visa holder to work at all.
- Foreign nationals who don't have a valid visa aren't allowed to work in Australia. This might include a person whose visa has expired or been cancelled.

How to check

To check whether someone is allowed to work in Australia, you can register with the Department of Immigration and Border Protection's free [Visa Entitlement Verification Online \(VEVO\)](#) system.

You can also ask the foreign national to email his or her current visa details directly from the [VEVO website](#) or the myVEVO app.

What are your employee's rights under anti-discrimination laws?

All people working in Australia have basic rights and protections in the workplace, including minimum pay and conditions.

The Australian Human Rights Commission can help you meet your anti-discrimination obligations when deciding to take on an employee.

Their Employer Hub has resources to help you:

- identify job requirements
- create job advertisements
- develop job application and selection processes
- write interview questions
- undertake medical assessments.

You can also get information about [protections from discrimination at work](#) under

the *Fair Work Act 2009* from the Fair Work Ombudsman website.

Remember that anti-discrimination laws apply to both employees and contractors.

As an employer, you can be held legally responsible for acts of discrimination or harassment that occur in the workplace or in connection with a person's employment.

What are your record keeping requirements?

As an employer, you must understand your [record keeping requirements](#). Penalties may apply for failing to meet your record keeping and pay slip obligations.

Employment records and payslips

Keep all employee records for seven years (*Fair Work Act 2009*).

You can download the Fair Work Ombudsman's [record keeping and payslips fact sheet](#) to help you.

There are also a number of [employment record and payslip templates](#) available.

Tax purposes

All employee and contractor records must be kept for five years.

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.

Are you paying the correct wages and entitlements?

There are 10 minimum employment standards that you must provide to all employees. They are called the [National Employment Standards \(NES\)](#).

The national minimum wage and the NES make up the minimum entitlements for most employees in Australia.

The minimum conditions

An employee's minimum wages, including penalty rates and overtime, will come from the award or registered agreement that covers their employment. An award will automatically apply to an employee if:

- it covers the business they are working for and the work they are doing
- there is no registered agreement that covers the business.

You **can't** use or include any conditions in an employment contract, enterprise agreement or other [registered agreement](#) that:

- provide a pay rate that is lower than the rate in the relevant award
- are less than the national minimum wage or the NES

- exclude the NES altogether.

If you fail to meet the NES in any way, you may face penalties.

How to find the right award and pay rates

Use the Fair Work Ombudsman's [Pay and Conditions Tool \(PACT\)](#) to easily calculate your employees' pay rates, shift work and leave entitlements from awards.

What tax do you need to deduct from your employee's pay?

Under the [Pay as you go \(PAYG\)](#) withholding rules, you must collect tax from employee payments so they can meet their end-of-year tax liabilities.

You'll need to withhold tax if any of the following apply:

- you have employees
- you have other workers, such as contractors, and you enter into voluntary agreements to withhold amounts from your payments to them
- you make payments to businesses that don't quote their Australian Business Number (ABN).

Penalties may apply if you don't meet your withholding or reporting obligations. The [Tax withheld from individuals calculator](#) will help you work out how much tax to withhold from your employees.