

INDUSTRIAL RELATIONS



Types of Employment

When engaging new employees, it is important to specify what type of employment they are being offered. The type of employment should be in accordance with business needs and the employees' required pattern of work.

Main types of employment in the Building and Construction Industry

1. *Permanent*

1.1 *Permanent full-time*

Permanent full-time employees are engaged by an employer on a permanent basis, they are usually engaged to work 38 hours per week, every week. Their weekly ordinary hours of work are guaranteed.

Some industrial instruments may permit the averaging of ordinary hours across a determined period. In this case an employee may work less or more than 38 hours each week but still be considered a full-time employee.

Permanent full-time employees are entitled to accrue paid leave entitlement in accordance with the relevant legislation and/or industrial instrument.

2.2 *Permanent Part-time*

Permanent part-time employees are engaged by an employer on a permanent basis, they are usually engaged to work less than 38 hours per week. They usually work the same hours each week, on the same days.

Some industrial instruments may permit the averaging of contracted part-time ordinary hours across a determined period. In this case an employee may work different hours each week but still be considered a permanent part-time employee.

Permanent part-time employees are entitled to accrue the same type of paid leave entitlements than permanent full-time employees but on a pro-rata basis.

Permanent full-time and part-time employees will usually be entitled to be provided a notice period when notified of their termination, they will also be expected to provide a notice period if they wish to leave their employment. They will also receive severance pay in the event of a redundancy provided they have met the minimum service requirement under the applicable industrial instrument.

Note – permanent employees engaged under the Building and Construction General On-Site Award are engaged as weekly hire – see section 3.

2. Fixed term or fixed task

Employees engaged on a fixed term basis are engaged for a pre-determined period of time. The offer will specify the date at which the fixed term contract is to end.

Employees engaged on a fixed task basis are engaged for a specified task. The offer will describe the task to complete and the contract will automatically terminate when the task is fulfilled.

Fixed term and fixed task employees can be engaged on a full-time or part-time basis. They will accrue the same paid leave entitlements as permanent employees.

Note – it is critical that employers keep on top of fixed-term and fixed task contracts and do not allow for employees to keep working past the end date or completion of the task. This may automatically convert the employment type to a permanent one.

3. Weekly and Daily Hires – National system

National system employers engaging employees covered under the *Building and Construction General On-Site Award* (On-Site Award) and the *Plumbing and Fire Sprinklers Award* (Plumbing Award) have an option to engage employees on a weekly hire basis or daily hire basis.

3.1 Weekly hire

Weekly hire employees can be full-time or part-time and have the same entitlements as permanent full-time and part-time employees.

3.2 Daily hire

Daily hire employees are engaged on a day to day basis, the minimum notice period of termination is one full working day.

As compensation for the short notice period daily hire employees are paid a daily hire loading.

Under the On-Site Award only tradepersons and labourers can be engaged as daily hire employees.

Under the Plumbing award only employees engaged in plumbing and mechanical classifications can be engaged as daily hire.

Note – daily hire is a type of full-time employment, not a casual employment, employees are entitled to all paid leave entitlements a permanent full-time employee receives. Only the notice period is different.

4. Casual

Casual employees are engaged to perform ad hoc work when required. Casual employees are not engaged with a commitment of being provided any hours of work, there is no expectation of ongoing work. Usually casual employees work irregular hours.

Casual employees do not accrue paid leave unless an industrial instrument expressly provide them with that entitlement. They will receive a casual loading to compensate for the absence of paid leave entitlements.

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Casual employees do not receive and are not required to give a notice period of termination of their employment as each shift is considered a separate engagement. They will also not be entitled to severance pay, even if they classify as long-term casual employees.

Long term casual employees may have an entitlement to unpaid parental leave and long service leave.

Note – it is critical that employers check the applicable industrial instrument for casual entitlements as they vary. For example, the Building Trades (Construction Award) 1987, covering some employees in the State Industrial Relations system, provides paid bereavement leave to casual employees. All Modern Awards (National) have a casual conversion clause requiring employers to offer casual employees with a specific service period (6 or 12 months) permanent employment.

Warning

In practice casual employment is still often used with some regularity in the days and hours worked and some expectations around hours and the employee's availabilities. Casual employees are provided with a contract of employment and required to provide an hour's notice of terminating their employment. This may be acceptable for a short duration however recent legal development in WorkPac Pty Ltd v Rossato [2020] FCAC 84 make this practice risky for employers.

In this case employees were engaged under a contract of employment which expressly identified them as casuals. At least one of the contracts specified the casual loading to be paid and expressly stated that the casual loading was paid in lieu of paid leave entitlements. The employment was also covered by an Enterprise Agreement stating that casual employees receive a casual loading in lieu of paid leave entitlement. After several years one of the employees took legal action and requested payment of his untaken annual, personal and compassionate leave. The Federal Court (the Court) reclassified the employee as a permanent employee based on his stable, regular and predictable employment pattern. Not only the Court ordered payment of all unused paid leave entitlements it also allowed the employee to keep the casual loading payment he had received.

Workpac Pty Ltd has applied to the High Court of Australia seeking special leave to appeal this decision. Until the appeal is decided this decision stands.

5. Apprentices and Trainees

5.1 Apprentices

Apprenticeship allows for the combination of work and study to obtain a recognised trade qualification.

An apprenticeship only exists if there is formal training contract between a person, the apprentice, and the relevant state or territory training authority. The apprentice will have to regularly undertake training through a Registered Training Opportunity.

School based apprenticeships exist when senior high school student start an apprenticeship while still at school. A formal training contract between the apprentice and the relevant state or territory training authority is required.

Apprentices will accrue leave entitlements in the same manner as permanent full-time employees, or part-time employees if they are school based apprentices. Their employment is covered by the same applicable legislation and/or industrial instrument than permanent employees. The applicable

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legislation and/or industrial instrument will often have separate rates of pay and additional entitlement for apprentices (i.e. payment for time spent at training).

5.2 Trainees

A traineeship allows for the combination of work and study to obtain a certificate qualification in a specific industry or occupation.

A traineeship only exists if there is formal training contract between a person, the trainee, and the relevant state or territory training authority.

Trainees will accrue leave entitlements in the same manner as permanent employees. Their employment is covered by the same applicable legislation and/or industrial instrument than permanent employees. The applicable legislation and/or industrial instrument will often have separate rates of pay and additional entitlement for trainees, some awards may exclude trainees from receiving some entitlements.

In Western Australia the relevant state authority for apprenticeships and traineeships is the Apprenticeship Office as part of the Department of Training and Workforce Development.

Always check the applicable legislation and industrial instrument for specific conditions attached to certain types of employment. As examples, for employer in the national industrial relations system this may be the Fair Work Act 2009 including the National Employment Standards and/or a Modern award, for employers in the state industrial relation system this may be the Minimum Conditions of Employment Act 1993 and a State award. A registered Enterprise Agreement applicable to an employee may also set specific terms and conditions.

Assistance Available

Master Builders is here to help you. Our industrial and employee relations specialists can provide advice and assistance to help you meet your obligations.

If you require assistance in understanding what type of employment to offer a prospective employee, or require templates, please contact the Master Builders team on iradvice@mbawa.com or [9476 9800](tel:94769800).

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