

Information Sheet

State Minimum Conditions of Employment

November 2021

Who do they cover?

The *Minimum Conditions of Employment Act 1993* (WA) (MCE Act) applies to all employees of non-national system employers who are covered by a state award, industrial agreement or Employer Employee Agreement (EEA). The MCE Act also applies to 'award-free' employees of non-national system employers, which includes managers and professionals. They do not apply to genuine sub-contract arrangements.

Who is excluded?

Casual employees are excluded from paid annual leave and paid sick/carer's leave. In lieu, they receive a 20 per cent loading on the minimum award rates.

The MCE Act excludes persons paid wholly by commission or piece rate, persons with disabilities in supported employment, volunteers and National Trust Wardens.

How does the MCE Act affect you?

The MCE Act specifies minimum entitlements that cannot be contracted out by employers and employees. The MCE Act overrides conditions in contracts of employment, state industrial agreements and state awards that are less favourable, even if those conditions were agreed on between an employer and employee.

What are minimum conditions?

The MCE Act was introduced on 1 December 1993 and provides minimum terms and conditions of employment for many employees in Western Australia.

Minimum rates of pay are displayed below.

Minimum rate of pay based on a 38-hour week for award free employees (effective the first pay period on and from 1 July 2021).

Age	%	Employee other than casual		Casual
		Weekly rate	Hourly rate (divide weekly rate by 38)	Employee
Adult (21 years)	100	\$779.00	\$20.50	\$24.60
20 years	90	\$701.10	\$18.45	\$22.14
19 years	80	\$623.20	\$16.40	\$19.68
18 years	70	\$545.30	\$14.35	\$17.22
17 years	60	\$467.40	\$12.30	\$14.76
16 years	50	\$389.50	\$10.25	\$12.30
Under 16 years	40	\$311.60	\$8.20	\$9.84

Minimum rates of pay for apprentices

Effective from the first pay period on or after 1 July 2021, the MCE Act prescribes minimum rates of pay for adult and junior apprentices. The relevant award rate of pay will apply for apprentices who are covered by an award. For apprentices who are not covered by an award, the minimum weekly rates of pay for apprentices are as follows:

Four-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First year	\$665.60	\$372.70
Second year	\$665.60	\$488.10
Third year	\$665.60	\$665.60
Fourth year	\$780.90	\$780.90

Three-and-a-half-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First six months	\$665.60	\$372.70
7 - 18 months	\$665.60	\$488.10
19 - 30 months	\$665.60	\$665.60
31 - 42 months	\$780.90	\$780.90

Three-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First year	\$665.60	\$488.10
Second year	\$665.60	\$655.60
Third year	\$780.90	\$780.90

Two-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First year	\$665.60	\$488.10
Second year	\$665.60	\$665.60

The MCE Act requires an apprentice who has reached 21 years of age be paid a Minimum Weekly Rate of Pay of \$655.60 per week from the first pay period on or after 1 July 2021. Where a relevant award prescribes an adult rate of pay in excess of the Minimum Weekly Rate of Pay for adult apprentices under the MCE Act, the employee will receive the better benefit.

Also effective from the first pay period on or after 1 July 2021, the MCE Act prescribes minimum rates of pay for trainees. The relevant award rate of pay will apply for trainees who are covered by an award. For trainees who are not covered by an award, the minimum weekly rates of pay for trainees are specified in the MCE Act.

Minimum entitlements for employees

Reasonable hours of work

The maximum hours of work for award free employees is 38 hours per week, plus reasonable additional hours.

The MCE Act requires at least the following to be considered in what are reasonable additional hours:

- any risk to the employee's health and safety;
- the employee's personal circumstances;
- business operations;
- notice given by the employer of the requirement/request to work additional hours;
- notice given by the employee of an intention to refuse additional hours;
- whether additional hours are on a public holiday; and
- the employee's hours of work over the previous four weeks.

Payment for overtime or reasonable additional hours

Award free employees are required to be paid for all hours worked in excess of the 38-hour weekly maximum. The applicable rate of pay will be the relevant minimum hourly rate (i.e. overtime does not attract any penalties).

Payment requirements

Unless otherwise authorised in an industrial agreement, contract of employment, employer/employee agreement (EEA) or required by an award, remuneration:

- cannot be paid in goods or services instead of money; and
- must be paid in cash or by cheque, or into a bank or financial institution account.

Authorised deductions

Deductions from an employee's pay must be authorised in writing by the employee, unless:

- authorised in an industrial agreement, contract of employment, EEA or award; or
- authorised or required by a court order or under a state or federal law.

Amount of pay on leave

Employees must receive their current rate of pay when going on leave. Where an employee's

ordinary hours of work have varied over the year, the hours over the last 52 weeks are averaged to determine the number of hours of paid leave.

Annual leave

Full-time and part-time employees are entitled to the number of ordinary hours they work in a four-week period, up to 152 hours.

By written agreement, the employee can forgo up to 50 per cent of that year's entitlement (i.e. two weeks) to annual leave provided they are given an equivalent benefit in lieu. An employer must not require an employee to cash out annual leave, or exert undue pressure on an employee, to make a decision in relation to cashing out annual leave. Leave loading is not a minimum condition.

Sick and carer's leave

Full-time employees are entitled to up to 76 hours (up to 10 days) of sick/carer's leave in each year of service. Part-time employees have a pro rata entitlement. Unused sick/carer's leave carries forward to future years.

Carer's leave is leave taken by an employee to provide care and support to a member of the employee's family or household because of an illness or injury of the member or an unexpected emergency affecting the member.

The definition of "employee's family" includes:

- spouse or defacto spouse;
- child, step child or grandchild (including an adult child) of the employee;
- parent, step parent, or grandparent of the employee;
- sibling of the employee; and
- any other person who, at or immediately before the relevant time for assessing the employee's eligibility to take leave, lived with the employee as a member of the employee's household.

To be entitled to paid sick or carer's leave, the employee must provide evidence of their personal illness or injury or the illness, injury or unexpected emergency affecting the member of their family or household for whom they took the leave. The MCE Act necessitates that the evidence would satisfy a reasonable person of the entitlement.

When an employee has used their entitlement to paid carer's leave, there is a further entitlement to unpaid carer's leave of two days for each permissible occasion an employee requires time off to provide care and support to a member of the employee's family or household because of an illness or injury of the member, or an unexpected emergency affecting the member. Unpaid carer's leave is also available to casual employees.

Bereavement leave

Employees are entitled to two paid days on the death of specified immediate family members and people living with the employee as a member of the employee's family.

Public holidays

An employee, who in any area of the State, is not required to work on a day solely because that day is a public holiday in that area, is entitled to be paid as if they were required to work on that day.

Parental leave

Employees receive up to 52 weeks unpaid parental leave, where they have 12 months continuous service with the same employer. Eligible casual employees are also entitled to unpaid parental leave. Employees are able to request to take a further 52 weeks of parental leave, after the initial period of leave. An employee may, upon finishing parental leave, request to return to work on a modified basis until the child reaches school age.

Please be aware that a Western Australian employee's entitlement to unpaid parental leave is provided by both the MCE Act and the *Fair Work Act 2009* (Cth) (FW Act). As a result of this interaction, where the FW Act provides employees with a more generous entitlement in relation to parental leave, that entitlement will apply. For example, an employee taking concurrent leave with their partner will be entitled to the minimum eight weeks unpaid concurrent leave entitlement under the FW Act, even though the MCE Act only provides for one week.

Significant change

Employers must advise employees of action that will significantly affect them and provide up to eight hours leave with pay for job interviews in the event of redundancy.

Employee records

Employers are required to keep specified employee records for seven years. Employers are encouraged to retain records for at least the duration of the employee's employment to assist employers with claims for other entitlements, such as long service leave or underpayment claims.

Employees not covered by an industrial agreement, award, or EEA must record the total hours worked each week, unless their salary exceeds \$45,000 per year.

Disclaimer: *This information is current as at the date of this information sheet. CCIWA has taken all reasonable care in preparing this information, however, it is provided as a guide only. It is not legal advice and should not be relied upon as such. CCIWA does not accept liability for any claim which may arise from any person acting or refraining from acting on this information. This document is subject to copyright. Its reproduction and use outside its intended purpose is not permitted without prior written permission.*