

Information Sheet

State Minimum Conditions of Employment

February 2025

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.

The MCE Act also covers employees who are paid wholly by commission and employees with a disability under the provisions of the Supported Wage System (SWS).

Who is excluded?

The MCE Act excludes 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 in the table.

Minimum rates of pay based on a 38-hour week for award free employees (effective the first pay period on and from 1 July 2024). As of 31 January 2025, the MCE Act has been amended to include 25 percent casual loading. A casual employee must be paid at least the new minimum for the casual rates.

Age	%	Employee other than casual		Casual
		Weekly rate	Hourly rate (divide weekly rate by 38)	Employee
Adult (21 years)	100	\$918.60	\$24.17	\$30.22
20 years	90	\$826.80	\$21.76	\$27.20
19 years	80	\$734.90	\$19.34	\$24.17
18 years	70	\$643.10	\$16.92	\$21.15
17 years	60	\$551.20	\$14.51	\$18.13
16 years	50	\$459.30	\$12.09	\$15.11
Under 16 years	40	\$367.50	\$9.67	\$12.09

Minimum rates of pay for apprentices

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 effective from the first pay period on or after 1 July 2024, for apprentices are as follows:

Four-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First year	\$762.80	\$427.10
Second year	\$762.80	\$559.40
Third year	\$762.80	\$762.80
Fourth year	\$895.00	\$895.00

Three-and-a-half-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First six months	\$762.80	\$427.10
7 - 18 months	\$762.80	\$559.40
19 - 30 months	\$762.80	\$762.80
31 - 42 months	\$895.00	\$895.00

Three-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First year	\$762.80	\$559.40
Second year	\$762.80	\$762.80
Third year	\$895.00	\$895.00

Two-year term	Weekly rate for adult apprentices	Weekly rate for junior apprentices
First year	\$762.80	\$559.40
Second year	\$762.80	\$762.80

The MCE Act requires an apprentice who has reached 21 years of age be paid a Minimum Weekly Rate of Pay of \$762.80 per week from the first pay period on or after 1 July 2024. 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.

The MCE Act also 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

Commission only employees

Commission only employees are entitled to minimum conditions under the MCE Act including:

- state minimum wage;

- annual leave, personal leave, bereavement leave and family and domestic violence leave; and
- provisions relating to public holidays, hours of work, deductions from pay and unreasonable requirements to spend or pay money to an employer.

Contact us on (08) 9365 7660 or at advice@cciwa.com for more information.

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 must be paid in cash or by cheque, or into a bank or financial institution account.

An employee cannot be compelled to accept goods or services instead of money.

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.

Annual leave

For each year of service, full-time and part-time employees are entitled to the number of ordinary hours they work in a four-week period, up to a maximum 152 hours.

Employees must receive their current rate of pay when going on leave.

If the number of hours for an employee cannot be determined, the hours worked each week are to be averaged over a period totalling 365 days prior to being entitled to or taking the leave.

Casual employees are excluded from paid annual leave and paid personal leave. In lieu, they receive a 25 per cent loading on the minimum award rates.

Cashing out of annual leave

By written agreement, after the completion of any year of service by an employee, the employee can forgo up to 50 per cent of that year's entitlement (i.e. two weeks) of annual leave provided they are given an equivalent benefit in lieu. A benefit will not be equivalent unless the employee is paid the same or higher amount that what would have been paid had the employee taken the leave.

An employer must not require an employee to cash out annual leave, make it a condition of employment for an employee to enter into an agreement to cash out their annual leave, or exert undue pressure on an employee to make a decision in relation to cashing out annual leave.

Personal leave

For each year of service, full-time employees are entitled to the number of ordinary hours they work in a two-week period, up to 76 hours. Part-time employees have a pro rata entitlement. Unused personal leave carries forward to future years.

Personal leave can be taken for the following circumstances:

- due to personal illness or injury affecting the employee; or
- an unexpected emergency affecting a member of the employee's family or household; or
- where an employee needs to provide care or support to a member of the employee's family or household, due to personal illness or injury affecting the member.

The definition of "employee's family" includes:

- spouse or de facto partner;
- child, step-child or grandchild (including an adult child, step-child or grand-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 personal 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 personal leave, there is a further entitlement to unpaid personal leave of two days for each permissible occasion an employee requires time off for personal circumstances.

An employee will not be entitled to personal leave if in the course of employment they suffered a personal illness or injury as a result of the employee's serious and wilful misconduct; or the employee's gross and wilful neglect.

Bereavement leave

Employees are entitled of up to two paid days on the death of an employee's family or household.

Public holidays

An employee, other than a casual 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.

The MCE have recently been amended to include the following entitlements for an employee;

- to be absent from work on a public holiday; or
- to be paid if absent from work on a public holiday; or
- to refuse (on reasonable grounds) a request to work on a public holiday.

An employer may request an employee to work on a public holiday if the request is reasonable. In determining whether a request, or a refusal of a request, is reasonable, the following must be considered:

- the nature and conduct of the employer's business or operations;
- the nature of the employee's work;
- the employee's personal circumstances, including family responsibilities;
- whether the employee could reasonably expect that the employer might request work on the public holiday;
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation (including compensation in the form of an annualised salary) for, or a level of remuneration that reflects an expectation of, work on the public holiday;
- the type of employment of the employee (for example, whether full-time, part-time, casual or shift work);
- the amount of notice in advance of the public holiday given —
 - by the employer when making the request; or
 - by the employee when refusing the request.
- other matters that may be taken into account in determining whether a request or refusal is reasonable.

The MCE also provides for substitution under a industrial instrument that may substitute

(or provide for the substitution of) a day or part-day for a day or part-day that would otherwise be a public holiday. If an employee is not covered by an industrial instrument, the employer and employee may agree in writing and both sign the agreement around substitution of a public holiday.

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 not be subject to restrictions for an unpaid concurrent leave entitlement under the FW Act, even though the MCE Act only provides for one week.

Family and domestic violence leave

From 9 September 2024, a minimum entitlement to paid family and domestic violence leave was introduced for employees within the state system. It mirrors the provisions outlined in the FW Act. It applies to all employees who are covered by awards, industrial agreements and award free employees.

This entitlement applies to full-time, part-time and casual employees.

An employee can take family and domestic violence leave if:

- the employee is experiencing family and domestic violence; and
- the employee needs to do something to deal with the impact of the family and domestic violence; and

- it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

Employees are entitled to take 10 days of paid family and domestic violence leave and 5 days of unpaid family and domestic violence leave in each 12 month period. The entitlement will not accumulate from year to year and will be available in full at the start of each 12 month work anniversary.

For the paid leave entitlement, full-time and part-time employees are entitled to be paid at their full rate of pay for the hours they would have worked if the leave was not taken. Casual employees are entitled to be paid at their full rate of pay for their rostered hours in the period when leave was taken.

Full rate of pay includes:

- loadings;
- overtime or penalties;
- incentive-based payments and bonuses;
- monetary allowances;

Employers must take steps to ensure information concerning any family and domestic leave an employee is taking is treated confidentially, as far as is reasonably practicable, which includes not including the leave category on a payslip not to disclose family and domestic violence leave.

Employees must comply with notice and evidence requirements. However, there may be additional evidence that may be reasonable – such as a police report, an appointment confirmation with a social worker etc.

Significant change

When an employer has decided to take action that is likely to have a significant effect on an employee, or make an employee redundant, the employer must inform the employee as soon as reasonably practicable after the decision has been made. The employer must discuss with the employee the likely effects of the action or redundancy on the employee, and measures that may be taken by the employer or the employee to minimise the significant effect.

Employers must 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. These employee records are:

- employee's name and date of birth if under 21 years old;
- employer's ABN;
- any industrial instrument that applies;
- daily of hours of work including the starting and finishing time, pay period and meal breaks;
- employee's classification, gross and net amount paid and all deduction for each pay period;
- any incentive, bonus, loading, penalties and any other monetary allowance;
- any leave taken, whether paid, partly paid or unpaid;
- any agreement to cash out annual leave;
- any information needed to calculate long service leave entitlement;
- any other records required by an industrial instrument, award or EEA;
- any necessary information to show the remuneration and benefits received by the employee;
- superannuation; and
- termination payment.

Records in relation to annual leave and long service leave must be kept for the duration of employment. 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.

It is compulsory for all state system employers to provide a pay slip to each employee within one working day of paying the employee for work performed.

 Employers requiring further information about minimum conditions should contact CCIWA's Employee Relations Helpline on (08) 9365 7660, email advice@cciwa.com or visit CCIWA's website at www.cciwa.com.

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