



EMPLOYMENT FAQ's FOR SA GRAPE GROWERS

Date: 7 September 2011

Overview

The Fair Work Act came into effect on 1 January 2010. At the same time new national awards were introduced to replace state awards. The [Wine Industry Award 2010](#) will apply to most staff working in vineyards. A process has been established to allow for the phasing in of the new award for the period from 1st July 2010 until 30th June 2014.

This resource is a general guide only, we will attempt to keep it up to date but you should always check and seek independent advice. Please read our [disclaimer](#) notice.

The guide is prepared in an FAQ (frequently asked questions) format. If you can't find the answer you want you can submit a question to admin@wgcsa.com.au. If you are a contributor to the [SA Grape Growers Industry Fund](#) we will seek professional advice on your behalf **at no charge to you**. Send an email: admin@wgcsa.com.au It is important that you obtain a copy of the [Wine Industry Award 2010](#) for your own understanding (you also are required to make a copy available to any employees covered by the award).

If you can't find the answer you are looking

FAQ'S

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Understanding awards:

What are the National Employment Standards (NES)?

There are ten minimum employee entitlements every employment contract must now meet. They are:

- 1. Maximum weekly hours of work - 38 hours per week, plus reasonable additional hours.*
- 2. Requests for flexible working arrangements - allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.*
- 3. Parental leave and related entitlements - up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, and other forms of maternity, paternity and adoption related leave.*
- 4. Annual leave - 4 weeks paid leave per year, plus an additional week for certain shift workers.*
- 5. Personal/Carer's leave and compassionate leave - 10 days paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.*
- 6. Community service leave - unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.*
- 7. Long service leave - a transitional entitlement for employees who had certain LSL entitlements before 1/1/10 pending the development of a uniform national long service leave standard.*
- 8. Public holidays - a paid day off on a public holiday, except where reasonably requested to work.*
- 9. Notice of termination and redundancy pay - up to 4 weeks' notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.*
- 10. Provision of a Fair Work Information Statement - employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.*

Do I have to pay staff under an award?

All employees whose job functions are covered by an award must have pay and conditions that are at least the equivalent of those in that award. If the employee is doing the work of a vineyard worker then they are most likely covered by the [Wine Industry Award 2010](#) (WIA).

As a general rule people in management positions are not covered by the [Wine Industry Award 2010](#). If they aren't covered by an award their pay must be at least the minimum wage and their conditions meet the [National Employment Standards](#).

If an employee is paid less than the award, the employer is at risk of a claim being made against them for underpayment. If you are found to have paid below the award you can be made to provide back pay for that person and any others you employed over the previous six years.

If you are using a [labour hire contractor](#) to supply pruners, etc you can be held responsible if they pay their staff below award rates. Fair Work Australia can collect and hold money for workers even if they can't be located (i.e. returned home overseas)

Which award do I use?

Where an employee is primarily involved in grape production, they will come under the [Wine Industry Award 2010](#) (WIA). If you have a mixed farm and an employee works more on other farm production then the [Pastoral Award 2010](#) is more likely to apply.

You need to consider carefully which award you pay staff under. Employers can't pick which Award they prefer, they are bound to use the award that is most appropriate to the work of the employee. The [Pastoral Award 2010](#), for example, typically has less generous provisions than the WIA. If you paid an employee under that award and it was later found that they should have been paid under the WIA you would be likely ordered to reimburse them for the difference, plus interest.

Some vineyard workers may be exempt from award coverage:

- If they are employed under an enterprise agreement (typically this only happens with large companies)
- If they are a vineyard manager and their duties are at a higher level than the award classifications

Labour hire contractors that supply vineyard labour **are** covered by the award

If still in doubt, contact us admin@wgcsa.com.au

What are the current award rates for vineyard workers?

You can download the current award rates [here](#). It includes rates for casuals and allowances. The Fair Work Ombudsman has recently launched [PayCheck Plus](#) which enables an employer to calculate pay rates (includes calculations for penalties and loadings).

What if the new award rate means I am now paying higher wages?

If as at 31 December 2009, an employee was entitled to a minimum wage, loading or penalty under their previous award that was **less than the corresponding entitlement in the WIA** then you are entitled to phase in the increased amount. This phasing-in period applies from 1 July 2010 to 30 June 2014.

To calculate the pay rate for the transition period, compare the rate from the old award with the rate of the equivalent classification under the new award. The difference between the two is called the Transition Amount.

$\text{New Pay Rate}^* - \text{Old Pay Rate}^* = \text{Transition Amount}$

*remember to include any allowances and casual loading in your calculations

The Transition Amount is then multiplied by the relevant proportional amount (see Table One) to establish the new rate of pay. The example below looks at a worker that under the new award would receive higher pay than they were getting.

Example

A vineyard hand was previously paid at Grade 3 classification. The weekly rate was \$622.80. Under the WIA the rate is now \$649.60. The Transition Amounts is therefore \$26.80. The transition amount is then multiplied by the proportional amount (Table One):

$$\$26.80 \times 60\% = \$16.08$$

Deduct this amount from the WIA award rate, i.e. $\$649.60 - \$16.80 = \$633.82$. This is the rate for 2011/12

If you having been paying an employee above the award rate you cannot reduce that rate without the employee’s agreement.

Table One Proportional Amounts

First full pay period on or after	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

Can I have an individual agreement with my employees?

In general terms “no” but you may wish to have an Individual Flexibility Arrangement Agreement with an employee or a number of employees individually. Clause 7 of the Award does make some provision for individual agreements but you may wish to seek advice as such agreements are not registered with FWA but must meet the Better Off Overall Test.

If my worker has an ABN and invoices me, do I have to comply with award conditions, NES and/or Fair Work Act 2009?

Having an ABN doesn’t automatically make someone a contractor. If the person is primarily supplying labour then they are likely to be deemed as an employee. The ATO has an [Employee/Contractor Decision Tool](#) to assist with this. Among the factors that the tool takes into account are the level of control the contractor has in undertaking any work, whether they can sub-contract any of the work and whether they are responsible for making good, at their cost, any errors.

Employers may be required to pay superannuation for contractors that primarily supply labour to them. Contractors may also need to be covered by WorkCover

Hours of work, overtime & penalty rates, breaks, etc

Full-time, part-time and casual – what’s the difference?

Full-time:

- employed to work an average 38 hours per week
- entitled to paid leave and public holidays.

Part-time:

- works less than 38 hours per week
- eligible, pro-rata, to the same pay rate and conditions as a full-time worker

Casual:

- paid by the hour, with a loading (in 2011/12 this is 22%)
- must be rostered on for a minimum 4 hours for each shift
- eligible for penalty rates
- casuals, other than those employed irregularly, who have been employed for 12 months they have the right to convert their contract to permanent. Within four weeks of the employee reaching 12 months of casual employment, the employer must give them notice in writing

providing the option to convert to permanent. The employee can elect to remain as a casual but can convert to permanent at any time after. If they do convert to permanent they can't revert to casual without the employer's agreement.

What are the maximum hours that an employee can work?

- *Employees can work a maximum of 38 hours per week plus 'reasonable additional hours'.*
- *10 hours is the maximum time on any one day, but this can be extended to 12 hours if the majority of workers agree*
- *The maximum time that can be worked without a break is 5 hours (breaks must be between 30 and 60 minutes).*
- *For shift-workers the maximum is 4 ½ hours but this can be extended to 6 hours by agreement:*
 - *For part-timers and casuals engaged to work no more than 6 hours on that shift*
 - *Where the worker is working a 'short day' (see 'Is there any flexibility in when hours are worked?')*

What hours can I roster staff on?

Ordinary hours for day workers are:

- *Between 6am and 6pm on weekdays and 8am-6pm on the weekend*
- *From 1 November to 30 April weekdays starts are extended to 5am*
- *The spread of hours can be varied with the agreement of a majority of employees*
- *Rosters must be continuous – e.g. employees can't be made to do a shift in the morning and then come back a few hours later to start another shift*

What about shift-workers?

Shift-work is defined in the Award:

- **Afternoon Shift**- *any shift that starts after 6pm and ends before midnight*
- **Night Shift** – *any shift that ends after midnight and at or before 8am*

My staff often have to work after hours, eg during harvest – can they still do that?

Yes, but if you roster them to start after 6pm then penalty rates apply.

How many shifts in a day can my employees be rostered on?

The Award states that up to 5 hours may be worked continuously except for meal breaks. So you can't get someone to work 3 hours in the morning and come back in the late afternoon to do more work

Is there any flexibility in when hours are worked?

Yes, but it must be agreed between the employer and a majority of employees. The options under the award are:

- *19 days of eight hours in each four week period, with either a fixed or rostered day off;*
- *nine days of eight hours and one day of four hours in each fortnight with either a fixed half-day off or a rostered half-day off at the beginning or end of the working week;*
- *four days of eight hours and one day of six hours in each week, with the six hour day being at the beginning or end of the working week; or*
- *any other arrangement agreed to by the employer and the majority of employees directly affected.*

Can you explain the difference between penalty rates and overtime?

Overtime is paid when the hours of ordinary time worked exceed the maximum daily ordinary hours or are in excess of 152 hours over 4 consecutive weeks.

Penalty rates are paid to a worker for ordinary hours worked on Saturdays, Sundays and, Public Holidays and, afternoon and night shifts.

When do I pay penalty rates?

For **day workers** (i.e. not rostered on to afternoons or nights), penalty rates apply:

- once an employee's hours exceed 7.6 hours on any day; or
- The employee works outside 6am-6pm (5am-6pm November 1st to April 30th) Monday-Saturday.

The penalty rates for **day workers** are:

- Monday – Saturday: 50% (i.e. time and a half) for the first two hours and then 100% (double time)
- Sundays: double time, for the overtime component
- Public holidays:
 - double time and a half for the overtime component
 - employees must also be paid for a minimum of four hours work

For **shift-workers** penalty rates are as follows:

- The standard penalty rate for an employee who works on afternoon or night shift is 15% on top of their normal rate
- This increases to 30% when the employee
 - works night shift only; or
 - remains on night shift for a longer period than four consecutive weeks; or
 - works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each shift cycle,
- For work from midnight Friday to midnight Saturday the rate is time and a half, Sundays are double-time and public holidays double-time and a half.

What are the rules regarding rest periods after overtime?

- Where an employee works overtime on one day they must be allowed a 10-hour break before they start ordinary hours on the next day. They must also be paid for those break hours that overlap normal hours.
For example, someone whose normal shift starts at 9am works overtime on a Tuesday until midnight. They are eligible for a ten hour break, i.e. from 1200 to 1000. The employer must pay them for the period 8am-9am.
- Where an employee is instructed to resume or continues work without having the 10 hour break, they must be paid at the rate of double-time until they are released to take the 10 hour break. The same conditions as above apply

Can overtime be taken as time off?

Yes, if both parties agree. If taken during ordinary hours (i.e. Monday-Saturday 6am-6pm) the overtime can only be taken at an hour off for each hour worked. If the time is not taken within four weeks then the overtime rate must be paid.

Employment documents

Do I need to have a written employment agreement or contract?

As soon as you employ someone you are entering into a contract, even if you don't have a written one. It makes sense therefore to have a written agreement to reduce the risk of a dispute.

What does a written agreement need to include?

The agreement should clearly state:

- Names and addresses of employer and employee
- Employment commencement date (and end date if a fixed term contract)

- Whether the position is full-time, part-time or casual
- Start and finish times and hours per week and any expectations regarding out-of-hours work and/or overtime
- Award name if paying under an award
- Award classification and pay rate
- Pay periods (eg weekly, fortnightly)
- Details of any probation period
- Any workplace requirements (e.g. OH&S, dress standard, use of own tools)

NB see also [‘What documents do I give to a new employee?’](#)

It is advisable to attach a Job Description to the contract that clearly outlines the work that you require the employee to do and what decisions they can make. It must be accurate – e.g. you can’t call someone a manager if they never make decisions.

NB You can download a useful [Offer of Employment](#) template from the Fair Work Ombudsman

Can I include a probation period?

Yes but only for full and part-time workers, not for casual staff. It can only apply for a maximum of six months.

I only want to employ someone for a fixed term

Fixed term contracts are allowed. A person employed under a fixed term contract cannot bring an unfair dismissal claim if the contract period was completed. They may be able to make a claim if the contract is terminated early.

Can I have an agreement with an employee that has different conditions to the award?

Yes, for example you may come to an agreement to vary the hours, eg to enable an employee to start later so they can get kids to school or do work from home out of hours. However there is a limit to what you can vary and they are:

- when work is performed;
- overtime rates;
- penalty rates;
- allowances; and
- leave loading.

Also the employee must agree in writing to the agreement and the changes must leave the employee better off overall.

Who can I legally employ?

- A permanent resident of Australia
- A person with a valid Visa*:
 - Check that the visa is the original, not a copy and that the visa date has not expired
 - Check of there are any limitations (eg 20 hours per week)
- Children under 16 cannot be employed during school hours or any job outside those hours that might interfere with their education

*When engaging a person with a Visa you are advised to contact the Department of Immigration to ensure that the employment meets the criteria. Failure to comply may result in substantial penalties.

I only employ family members, does that make a difference?

It is arguable that family members are still regarded as employees under the [Wine Industry Award 2010](#) if they are undertaking work that is covered by the award. If they are working at a level above Level 5 then they fall outside the award. They may be covered by another award or be award-free.

All employees must be covered by WorkCover and may also be included for the purpose of Payroll Tax (see [What do I have to register for if I employ staff](#)). Employees who are over 18 and earn \$450/month or more most also be paid superannuation

What documents do I give to a new employee?

- *A copy of the employment agreement (signed by employer and employee – parent/guardian if employee is under 18)*
- *Tax file declaration form (not available as a download, usually available at newsagents or ring 1300 720 092)*
- *Superannuation Choice of Fund form ([download](#))*
- *A copy of the [Fair Work Information Sheet](#)*

An employer is also legally required to make a copy of the award available to employees, e.g. pinned to a notice board, on a lunchroom table, etc.

Registration and Record Keeping

What do I have to register for if I employ staff?

- *Through the Australian Tax Office (can all be done at the same time [here](#)):*
 - *an ABN*
 - *a separate tax file number (TFN) if you are operating as a partnership, company or trust. Sole traders use your individual TFN*
 - *Register to collect PAYG (Pay as You Go) Tax*
- *You are legally required to register with [WorkCover](#) if your total wage bill is more than \$11,155 (in 2011) or unless a claim is lodged by a worker. However, if you cross the threshold, you must register with WorkCover within 14 days.*
- *If you provide housing, a vehicle or any other benefits to employees for private use then you are advised to register for [Fringe Benefits Tax](#) (FBT)*
- *Payroll Tax when the Australian wages bill of an employer or group exceeds \$50,000 in any month.*

What employment records do I need to keep?

Employment records must be kept for at least 7 years. They include:

- *employment agreements and any documents the employee supplied during recruitment*
- *Leave records: annual, sick, long-service, study and special leave*
- *Wages paid, including penalty rates and allowances*
- *Tax file declaration form and PAYE tax records*
- *Records of any accidents, injuries and any WorkCover claims*
- *Superannuation records:*
 - *the date and amount of super you paid for each employee*
 - *how you worked out the level of super you paid*
 - *that you have offered your eligible employees a choice of super fund*
 - *the details of the super fund that you paid your employee's super into.*
- *Copies of any licences, registrations or permits that an employee needs to do their job, e.g., ChemCert, car, first aid*
- *Employee bank details*
- *Emergency/next of kin contact details*
- *Any communication between employer and employee*

- *Records of performance reviews, change of duties/classification*

The Fair Work Ombudsman has two useful templates for recordkeeping that you can download:

- [Employee details record](#)
- [Employee Leave records](#)

I want to pay Piece Rates

There is no prescribed rate for piece work (eg \$/vine pruned). It is a requirement that an 'employee of average capacity' must be able to earn 20% more per hour than the minimum hourly award rate for that work.

The employer must have a written, signed agreement with a piece worker (signed by a parent/guardian if they are under 18). The agreement must state

- *that the piecework rate will be paid instead of the minimum wages specified in clause 16— Classifications and adult minimum wages of the Wine Industry Award 2010;*
- *that the piece worker won't be paid a meal allowance, won't work ordinary hours of work and won't be paid overtime and penalty rates; and*
- *the date the agreement commences to operate.*

The employer must give a copy of the agreement to the piece worker.

If engaging a contractor to supply vineyard labour, it is advisable to check they are being paid in accordance with the award

What if provide a house or board for an employee?

If you provide housing for an employee you are advised to have a written agreement. If you are not charging rent neither party is covered by the Residential Tenancy Act and you may become liable for [Fringe Benefits Tax](#). Because there won't be a bond it will be harder to recover costs if any damages occur. The employment contract should include a clause that termination of employment also means terminating the rental.

If you are charging rent then you must have a [Residential Tenancy Agreement](#)

Paying Wages

How often do I have to pay wages?

Wages must be paid either weekly or fortnightly. This can be altered (e.g. to monthly) but only if the employee agrees in writing. Wages must be paid by cash or electronic funds transfer (EFT).

Do I have to provide a pay slip?

Yes, within one day after you pay staff

What needs to be on the pay slip?

The Pay slip must include:

- *Legal and/or trading name of employer*
- *Employee name*
- *Date of payment (eg 19/06/09)*
- *Period of payment (eg 08/10/11 – 15/10/11)*
- *Payment details (hours, rate, gross, tax and nett pay)*
- *Overtime hours worked and rate of pay*
- *Details of any deductions (eg super)*
- *Amount and the name of the superannuation fund*
- *Annual leave and sick leave accruals*

You can download a [pay slip template](#) from the Fair Work Ombudsman

How do I find award rates?

Download or obtain a copy of the [Wine Industry Award 2010](#) from Fair Work Australia. Go to 'Minimum Wages and Related Matters' to get the current pay rates. The same section has guidelines for calculating piece rates

What records do I need to keep?

[See Registration and Record Keeping](#)

What if I over pay or under pay wages?

If you **underpay** wages you are required to back pay them. NB Claims for underpayment of wages may arise for up to 6 years.

If you **overpay** wages you generally cannot recover the money by deducting from future wages. You will need to come to an agreement, eg for the employee to make fortnightly payments until the overpayment is recovered. If the employee does not agree then you will need to seek legal advice on how to recover the overpayment.

What if I employ labour hire contractors?

If you are using a labour hire contractor to supply pruners, etc you can be held responsible if they pay their staff below award rates. It's very important that you have a signed agreement with the contractor that includes:

- Their ABN – check that it is valid at www.abr.business.gov.au/
- Their agreement to:
 - pay in accordance with the award;
 - meet OH&S requirements;
 - ensure all workers are legally entitled to work (current visa)
 - meet all their statutory obligations and not act unlawfully

You are advised to further protect yourself by providing a copy of the award and pay rates to the workers, e.g. where they have lunch, etc.

Superannuation:

Who do I have to pay?

- employees that earn \$450/month or more and who are 18-69 years.
- contractors that you engage principally for labour, even if they quote an Australian business number (ABN). This does not apply to labour hire companies

How much do super do I have to pay?

The rate is currently 9%. Super is paid on ordinary hours of work, including casual loading, but not on overtime.

How often do I need to pay super?

Super must be paid at least quarterly. The final dates for quarterly payments are:

- 28 October
- 28 January
- 28 April
- 28 July

Who chooses the super fund?

Employees have the right to nominate the super fund of their choice. You should provide them with a [Standard choice form](#). They must notify the employer of the super fund within 28 days of commencement. After that the employer can nominate the fund, eg one they are already using for other workers. If that occurs **every payslip must include** the name of the super fund and the contributions.

Where can I get details on my obligations regarding superannuation?

Download [super information](#) from the ATO

What should I do if I haven't been paying super when I should have been?

The ATO has information on this. [Download](#)

Superannuation Obligations

Not sure of your obligations as an employer?

If your new employee is eligible to choose a super fund, you should provide them with a [Standard choice form](#) (NAT 13080) within 28 days from the day they started working for you. The employee should also be aware that if they don't reply or complete the form that the superannuation contributions will be made into your default fund.

Employers must advise employees of the name of the default fund and must show the contributions on EVERY PAYSLLIP.

If you require further details please call us or go to <http://www.ato.gov.au/content/00108082.htm>

Holidays, Sick and Parental Leave

What are the rules around annual leave?

- Full-time workers are entitled to 20 days paid annual leave per annum.
- Part-time workers have the same pro-rata entitlement
- Shift-workers are entitled to 5 weeks annual leave. A shift-worker is someone that regularly works Sundays and public holidays. Where a worker does occasional shift-work, an extra half days annual leave should be provided for every full month they do shift-work.
- All are entitled to a 17.5% leave loading
- Payment is due when leave is taken or on termination.
- Casual workers are not entitled to annual leave

What about sick leave?

This has been replaced with 'Personal/Carers Leave' and is provided for in the [National Employment Standards](#). In effect this allows fulltime 76 hours sick and carers leave per year with pay. For part-timers the leave is pro rata, i.e. if they work 2 days per week they are allowed 30.4hours (two-fifths of 76 hours). Any unused leave accumulates indefinitely but is not payable on termination.

Paid Carers Leave is not payable to casual employees but they are entitled to the same period of absence for the purpose of caring for family members.

Long Service Leave Entitlements

- 1.3 weeks for each completed year.
- Long Service leave maybe taken as leave or, cashed out by agreement between employee and employer (be sure to complete [download and complete this form](#) if you do)
- Not payable for incomplete years.

- Maybe payable on a pro rata basis between the 7th and 10th year but employer may withhold payment if employee is dismissed for misconduct between 7th and 10th years.
- No leave loading is payable with Long Service Leave.
- Payable on termination if employee has worked at least 7 years.

Do I have to pay parental leave?

Paid Parental Leave (PPL) commenced on 1 January 2011. Eligible parents are entitled to receive an amount equal to the Federal Minimum Wage rate for up to 18 weeks. The employer makes the payment but Centrelink is required to provide the funds to the employer before payment to the employee is due. Download [Parental Leave Toolkit](#).

Terminating employment

What do I do if it looks like I'm going to have to warn or dismiss an employee?

Casuals

Casuals are engaged by the hour and therefore their employment can be terminated with one hour's notice or by the completion of the minimum engagement.

Full and Part-Time Staff

It is generally accepted that an employer will provide appropriate warnings to an employee before dismissing them unless a major breach of contract occurs (see [instant dismissal](#) rules below). To reduce the risk of an unfair dismissal claim the following steps are advised:

- *Notify the employee in advance that you need to meet them to discuss problems with their work. Invite them to bring a support person – they are entitled to have anyone with them*
- *Have another person in attendance to record the meeting – but take and keep your own notes of the meeting*
- *Explain where the employee is not performing to contract and provide what they need to do to improve and retain their job and give them reasonable time to reach the required standard*
- *If you intend to proceed with a warning do so the following day or another reasonable period of time to consider the fact*
- *Provide the warning in writing and ask the employee to sign that they have received it. If they refuse to sign, ask why and record that response in your notes*
- *Under no circumstances should an employer decide the outcome prior to giving the employee the opportunity to explain their circumstances.*

We recommend that you obtain a copy of the [Small Business Fair Dismissal Code](#)

NB Sometimes, in the heat of the moment, an employee may decide to quit on the spot. You may place yourself at risk of an unfair dismissal claim if you accept that resignation and they later change their mind. It is wiser to provide the written notice of the dismissal the next day or at least contact them when you have allowed enough time for both parties to have 'cooled off'.

If you ultimately proceed with dismissing the employee you need to ensure that all outstanding entitlements (e.g. unused leave) are paid on that day or the following. This includes the minimum period of notice except for dismissal for serious misconduct.

What if I need to dismiss someone immediately?

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes

1. *theft, fraud,*

2. *intoxication or under the influence due to alcohol or drugs (which may include legal prescriptions)*
3. *violence and*
4. *serious breaches of occupational health and safety procedures.*

If the employee is being dismissed for an alleged criminal action (theft, fraud, violence, etc) the employer should report the offence to the police. This could be important if an unfair dismissal claim is lodged.

What should I know about unfair dismissal claims?

Commonwealth workplace laws prevent employees from being unfairly dismissed. The conditions for making an unfair dismissal claim are:

- *In a small business* the employee must have been employed for 12 months*
- *In any other business, the employee must have been employed for 6 months*

**A small business is defined as having less than 15 employees.*

Claims for unfair dismissal cannot be made by

- *someone dismissed during a probationary period*
- *where someone was employed for a fixed term and they completed that term*
- *a 'true' casual*
- *by a contractor*
- *employees who resign*
- *employees earning more than \$118,101 (2011/12 financial year)*

The [Small Business Fair Dismissal Code](#) has a checklist to assist employers undertaking dismissal procedures. Fair Work Australia also has a [guide to unfair dismissal](#)

Is there a difference between making someone redundant or retrenching them?

A redundancy occurs when a POSITION is no longer required to be performed.

A retrenchment occurs when an EMPLOYEE is no longer required and the position is retained. A position is made redundant when the work is no longer required. It should never be used as an alternative to dismissal. Once a position is redundant it cannot be filled for 12 months. A small business employer may not be required to pay redundancy but the employer must give at least 4 weeks' notice of a redundancy.*

**A small business is defined as having less than 15 employees.*

We cannot recommend strongly enough that you should obtain professional advice prior to advising any employee that their position may become redundant. Whilst small employers may be exempt from severance payments they may not be exempt from unfair dismissal provisions.

You can download [redundancy guidelines](#) from Fair Work Australia

Union Access

Is it true that union officials have a right of entry to my business?

Yes, but it's not automatic. They must

- *hold a valid right of entry permit, issued by Fair Work Australia – ask to see it before allowing entry.*
- *give at least 24 hours' notice before entering and entry can only occur during working hours.*
- *set out the basis on which he or she has entry rights*

- *comply with any reasonable request from an employer that discussions or interviews take place in a particular part of the premises and that they take a particular route to reach that location*
- *comply with any reasonable occupational health or safety request.*

They also need to show that at least one of your employees is a union member if you are negotiating a workplace agreement

[Download Union Right of Entry Guide](#)

If I only use contract labour can any union official enter my business?

In all instances the above criteria applies to the contractor which may impact on your workplace.

RESOURCES

Fair Work Australia	www.fwa.gov.au
Fair Work Ombudsman	www.fairwork.gov.au InfoLine: 131394
WorkCover	www.workcover.com
Wine Industry Award 2010	www.fwa.gov.au/documents/modern_awards/pdf/MA000090.pdf
SA Residential Tenancies	http://www.ocba.sa.gov.au/tenancies/res/index.html

Wine Grape Council of South Australia Disclaimer Notice

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