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## Part 4 : Employing People in Australia (Part 2: Employing staff)

We briefly explained about employment standards in Australia before. If employers understand how to employ staffs in Australia properly, they can comply with the legal requirements when employing people.



Here we briefly explain about the hiring employees, engaging independent contractors, hiring apprentices & trainees and hiring people from overseas in Australia.

For more information on hiring employees, see [fairwork.gov.au](http://www.fairwork.gov.au):

<http://www.fairwork.gov.au/Find-help-for/Small-business/hiring-employees>

### 1. Things to do when employing staff :

- Write a position description - list all the duties and responsibilities of the position; consider what sort of skills and experience the employee will need; consider the hours you want the employee to work.
- Determine the modern award or enterprise agreement that will apply to the employee. If you are unsure which modern award applies use the Award Finder tool, located in the Awards section of the Fair Work Ombudsman's website.

<http://www.fairwork.gov.au/awards-and-agreements/awards>

- Check which classification in the modern award / enterprise agreement applies to the employee (e.g. Grade 2, Level 1).
- Check which type of employment the employee will come under in the modern award / enterprise agreement (e.g. full-time, part-time or casual).

- Check the modern award / enterprise agreement for conditions relating to the type of employment and the proposed hours. For example, will penalties or overtime apply to any hours worked? Do the hours and days of work need to be agreed in writing?
- Confirm the correct rates of pay, loadings and allowances, using the PayCheck Plus tool located in the Pay section of the Fair Work Ombudsman's website.  
<http://paycheck.fwo.gov.au/PayCheckPlus.aspx>
- Provide all new employees with a Fair Work Information Statement. You can download the Fair Work Information Statement from the Employment section of the Fair Work Ombudsman's website.  
<http://www.fairwork.gov.au/Employee-entitlements/National-Employment-Standards/fair-work-information-statement>
- Provide new employees with a letter of engagement. While this is not a legal requirement, it is good practice to inform your new employees about the terms and conditions of their employment. Template engagement letters can also be downloaded from the Policies and Guides section of the Fair Work Ombudsman's website.  
<http://www.fairwork.gov.au/about-us/policies-and-guides/templates#employ>
- Remember that it is unlawful to take adverse action against a prospective employee because of that person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. Adverse action against a prospective employee is where the prospective employer:
  - refuses to hire the prospective employee
  - discriminates in the terms and conditions of employment offered.

## 2. Engaging Independent Contractors

An independent contractor is someone who is self-employed and contracts their services to clients, such as other businesses. Independent contractors are not employees and will generally have different rights to employees. It is lawful for a business to engage an independent contractor; however, there

are laws in place to protect employees from being treated as an independent contractor when they are in fact employees.

It is important that you understand the difference between independent contractors and employees and provide them their correct entitlements. Just because workers have ABNs or provide an invoice for payment, does not of itself make them independent contractors. Labelling people as independent contractors or getting them to sign contracts which state that they are independent contractors does not necessarily make them one either. There are multiple factors that are taken into consideration.

The Fair Work Act 2009 makes it illegal to:

- say something false to persuade an employee to become an independent contractor
- dismiss or threaten to dismiss an employee and then hire them as an independent contractor to do the same work
- claim that an employee is an independent contractor

Misrepresenting or disguising an employment relationship as an independent contracting arrangement is known as 'sham contracting' and is against the law. Dismissing or threatening to dismiss an employee in order to engage them as an independent contractor is also against the law.

For more information on independent contractors, see [fairwork.gov.au](http://www.fairwork.gov.au):

<http://www.fairwork.gov.au/find-help-for/independent-contractors>

### 3. Hiring apprentices & trainees

Apprenticeships and traineeships combine training with working in a real job, for a real boss, with a real wage. There are two main differences between an apprentice and a trainee. An apprentice is trained in a skilled trade and upon successful completion will become a qualified tradesperson. Trades such as electrical, plumbing, cabinet-making and automotive mechanics are just a few that are a part of the apprenticeship scheme.

A trainee is someone who is being trained in a vocational area. These vocational areas include, but are not limited to, office administration, information technology and hospitality. Upon completion of a traineeship you will be eligible to receive a minimum of a certificate II in your chosen vocational area.

A school-based apprentice is trained in a skilled trade, and upon successful completion, will become a qualified tradesperson. Students may convert to a full-time or part-time apprenticeship when they finish school to allow them to complete the qualification.

Upon completion of a school-based traineeship, students will receive a minimum of a Certificate II in their chosen vocational area.

Apprentice and trainee pay and conditions come from their award or agreement and the National Employment Standards.

For more information on apprentices and trainees, see [fairwork.gov.au](http://www.fairwork.gov.au):

<http://www.fairwork.gov.au/find-help-for/apprentices-and-trainees>

#### 4. Hiring people from overseas

Not everyone is allowed to work, for example some visas do not allow non-citizens to work in Australia. Non-citizens who no longer hold a valid visa are also not allowed to work in Australia.

Australian businesses are expected to take reasonable steps, at reasonable times, to ensure they are not employing, referring or contracting illegal workers. Visa Entitlement Verification Online (VEVO:

<http://www.immi.gov.au/Services/Pages/vevo.aspx>) is a free online service and is the preferred method to check if non-citizens are allowed to work.

Non-citizens must comply with their visa conditions and be aware of the date that their visa ends. Visa holders are expected to either leave Australia or make a new visa application before their visa ends so they remain lawful. If a person's visa ends while they are still in Australia they become an unlawful non-citizen.

Every worker from overseas must have a valid Australian visa with work rights. Temporary visas with work rights include working holiday maker visas, student visas and the subclass 457 visa.

Employers are responsible for checking all workers' rights to work in Australia and may ask to see workers' passports or other identification.

Employers must have permission from the employees to check their work rights.

For subclass 457 visa holders, sponsoring employers:

- must give workers from overseas pay and conditions at least as good as other workers that are doing the same work at the same workplace

- must only employ workers from overseas in their approved skilled occupation
- must make sure that workers from overseas do not work for other employers
- cannot pay workers in cash
- must pay the return airfare for overseas workers if requested in writing by you or DIAC
- must not make deductions from workers' pay (other than tax) without their permission.

For more information on Immigration facts for overseas workers, see [fairwork.go.au](http://fairwork.go.au):

[http://www.immi.gov.au/translated-info/\\_pdf/rights-obligations-workers/english.pdf](http://www.immi.gov.au/translated-info/_pdf/rights-obligations-workers/english.pdf)

#### 5. National minimum wage for adults (review- every July)

The full-time minimum wage is \$16.87 per hour or \$640.90 per week (from 1 July 2014). This means that most employees in the national system shouldn't get less than this.

Casuals covered by the national minimum wage get an extra 25%.

The national minimum wage is the minimum wage that applies to employees who aren't covered by an award or agreement. It covers the whole national workplace relations system.

Most employees in the national workplace relations system are covered by an award. See Finding the Right Pay for tools and information to help you find minimum wages under awards.

<http://www.fairwork.gov.au/pay/national-minimum-wage/Pages/default.aspx>

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