

International students: what are your rights at work?

DISCLAIMER

This factsheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information.

This fact sheet provides an overview of the minimum employment rights of international students who live and work in Victoria.

Do you have any work rights as an international student?

Yes, international students have the same minimum rights and protections under the law as resident workers.

That means that you are entitled to the same pay and minimum conditions of employment as resident workers.

The only difference is that, as an international student, you must be mindful of the limit on the number of hours that you can work while your course is in session.

Can your employer force you to work more than 40 hours a fortnight?

If your employer asks you to work more than 20 hours per week or 40 hours per fortnight, you are entitled to refuse.

Employers who knowingly make international students breach their visa conditions face fines and criminal charges under the *Migration Act 1958*.

Further, Australian employment laws make it unlawful for an employer to punish you in any way (e.g., dismiss you, demote you or cut your work shifts) because you make a complaint or inquiry about your employment. If this happens to you, contact the International Students Work Rights Legal Service

Know what type of worker you are

Before you start working for a person or a business, it is important that you understand what type of worker you will be. The two main types of worker are called **employee** and **independent contractor**. You are either one or the other – you can't be both.

Employees generally work for an employer who controls:

- what work is to be done;
- how the work is to be done; and
- when and where the work is to be done.

Employees are entitled to minimum pay and other conditions (see more about this below).

Independent contractors, instead, run their own business. They have an ABN (Australian Business Number) and they get paid after they issue an invoice for the services they have provided. They generally use their own tools and equipment to get the job done.

You could also be a **volunteer** in a not-for-profit organisation (e.g., a charity), which means you have agreed to do some work for free (without getting paid). Or you could be on a **vocational placement**, which involves doing work as a *requirement* of your course. You will not be paid for that vocational placement.

If you are an employee: are you permanent or casual?

A permanent (full-time or part-time) employee is entitled to:

- The same shifts every week (eg you are told to work the same hours every Friday, Saturday and Sunday);
- Paid annual leave;
- Paid personal leave (which includes both sick leave and carer's leave); and
- Notice or pay in lieu of notice before the employer can terminate the employment.

A casual employee on the other hand cannot expect the same shifts every week as there are no guaranteed hours. Casual employees are not entitled to paid leave and they are not entitled to notice of termination. However, the advantage of casual employment is that casuals are usually entitled to a higher hourly rate of pay.

Example: Marco usually works 15 hours a week but always on different days of the week. His shifts have different start times and go for different lengths of time. This suggests that he is a casual employee and is not entitled to paid annual leave, personal leave or notice. But he is probably entitled to a higher rate of pay per hour.

Tax Obligations

Whether you are a permanent or a casual employee, you will be required to obtain a tax file number and provide this to your employer.

You can apply to receive one for free at:

<https://www.ato.gov.au/Individuals/Tax-file-number/Apply-for-a-TFN/>

Minimum Pay

Depending on the job you are performing, and the employer you work for, your minimum pay will most probably be set out in:

- A Modern Award (which is a list of minimum conditions that apply across a whole industry or occupation); or
- An Enterprise Agreement (EA) (which is a list of minimum conditions that apply to employees in a particular workplace).

You can find out which Modern Award or EA covers you by asking your employer or by contacting the Fair Work Ombudsman, either over the phone or online.

Even if you are not covered by a Modern Award or EA, there is a national minimum wage in Australia. Currently, the national minimum wage is:

- **\$17.70** per hour if you are 21 years or older and you are working as a **permanent** (full-time or part-time) employee;
- **\$22.13** per hour if you are 21 years or older and you are working as a **casual** employee.

Lower rates of pay apply if you are under 21 years of age or if you are doing an apprenticeship or a traineeship.

Can you agree to an hourly rate which is lower than the minimum wage?

No. The minimum rates of pay apply to you even if you sign a written contract with a lower hourly pay. You and your employer can always agree to a higher rate of pay, but not to a lower rate of pay.

If you are not being paid your correct minimum wages, you have 6 years from the first underpayment to go to court to claim the money that you are owed.

Trial work: can the employer ask you to work for free?

The general rule is that you should be paid for every hour that you work as an employee. You may choose to agree to do a **short** (e.g., one or two hours) unpaid trial to demonstrate to an employer that you have the necessary skills to do a particular job. If you are supervised for the whole trial and you do not work for longer than is reasonably necessary to show that you have the required skills, then the Fair Work Ombudsman will not treat this as an unlawful underpayment of wages.

However, if you never agreed to an unpaid trial, you believed you were an employee and the employer later states that you will not be paid because you were doing a trial or you were being trained, you can make a complaint about underpayment of wages.

Example: Yin applied for an advertised casual job in a retail store. She had an interview and was told she had the job. She worked 20 hours in her first week but the boss later told her that she would not be paid for the first 8 hour shift because that was a free trial. Yin could either make a complaint to the Fair Work Ombudsman or she could go straight to court with a small claim.

Payslips

If you are an employee, your employer must provide you with a payslip within one working day of when you are paid. The following information **must** be included on each payslip:

- The employer's name and ABN;
- Your name;
- The date you have been paid;
- The period for which you have been paid;
- The gross (before tax) and net (after tax) amounts of the payment;
- If you are paid an hourly rate, what the ordinary hourly rate is and how many hours you worked at that rate;
- Any penalty rates or loadings;
- The amount of any superannuation contribution made and the name of the fund into which that contribution is to be made;
- Any deductions made.

Can your employer make deductions from your pay?

Your employer must not take out (deduct) money from your pay for any reason (including to pay for non-paying customers, the cash registers not having enough money in them at the end of your shift, uniforms or anything else), unless:

- Your employer has your express permission *in writing* and the activity is in your *best interests*; or
- The deduction is authorized under you

Modern Award or EA or some other Commonwealth Legislation.

Other Rights

There are other protections that apply to international students, in addition to the above.

For example:

- You must not be discriminated against at work because of certain characteristics, including race, sex, age and disability (and many more characteristics);
- You must not be sexually harassed at work, which means that you should not be exposed to unwanted sexual conduct which is offensive or humiliating;
- Your employer must provide and maintain a healthy and safe workplace for you;
- You must not be dismissed or have your work hours cut or be punished in some other way because you asked about your workplace rights or entitlements or you did something that the law allows you to do (e.g., you took a day of sick leave in accordance with the law).

Need legal advice?

If you would like to make an appointment for free and confidential legal advice about your work rights with the International Students Work Rights Legal Service, please contact the Study Melbourne Student Centre by telephone on **1800 056 449** or by email on **info@studymelbourne.vic.gov.au**