



Upcoming changes to state employment laws in WA

Changes for casual employees

The minimum wage for casual employees in the State industrial relations system is being increased and there will be a new test for determining if a worker's employment is casual employment.

These new provisions in the *Industrial Relations Act 1979* (IR Act) and *Minimum Conditions of Employment Act 1993* (MCE Act) have been introduced by the *Industrial Relations Legislation Amendment Act 2024* and will commence on 31 January 2025.

This fact sheet outlines:

- changes to minimum wages for casual employees
- the new test for determining casual employment

Minimum wages for casual employees

Current situation

The MCE Act requires that all employees in the State industrial relations system are paid at least the applicable state minimum wage. The Western Australian Industrial Relations Commission sets the state minimum wage each year, with different minimum rates for adult employees and junior employees. Casual employees receive a casual loading on top of the applicable minimum rate, which is currently set at 20 per cent.

What is changing

From 31 January 2025, the casual loading applied to the state minimum wage rate will increase to 25 per cent. The new minimum hourly rates of pay for casual employees in the state system are in the table on page 2.

The increase to the casual loading for the state minimum wage will not require all casual loadings in WA awards, agreements (or a contract of employment) to be 25 per cent. However, if an employee's pay rate under an award or agreement is lower than the casual state minimum wage, the employee will be entitled to be paid the relevant state minimum wage rate.

State employment laws are changing

This fact sheet is part of a suite of information on the changes to state employment laws that will commence on 31 January 2025. For details on the changes visit www.demirs.wa.gov.au/new-employment-laws.

**New minimum wage rates for casual employees
Effective 31 January 2025**

Age	Casual hourly rate
Adult (21 years or over)	\$30.22
20	\$27.20
19	\$24.17
18	\$21.15
17	\$18.13
16	\$15.11
<16 years	\$12.09

From 31 January 2025, some pay rates for casual employees in WA awards which have less than 25 per cent casual loading will fall below the casual state minimum wage. These employees must be paid the casual state minimum wage.

Wageline's WA award summaries will be updated to include state minimum wage rates where necessary.

New test for determining casual employment

Background

In the past, casual employment has generally been considered to be a working arrangement for those employees who work on an irregular basis with no guarantee of ongoing employment. Courts have historically examined the substance of an employment relationship to assess whether it was genuinely casual in nature.

However, a recent High Court decision found that employment relationships are substantially defined by the contractual terms agreed by the parties at the outset of the relationship, irrespective of any regularity and consistency of working arrangements or expectations of continuing employment. This approach enables workers to be labelled as casual employees, regardless of the nature of their working arrangements in reality.

The new test

The IR Act has been amended to provide a new objective test for determining whether an employee is a casual employee. The new objective test will also apply to the MCE Act and the *Long Service Leave Act 1958*.

The new test requires that in determining whether an employee is a casual employee, the real substance, practical reality and true nature of the relationship between the employee and the employer are ascertained. Consideration must be given to the totality of the relationship, rather than strict contractual terms.

The new test restores the previous common law approach and will safeguard against workers being artificially labelled as casual employees by the terms of a contract.

The new test will apply from 31 January 2025. Businesses should review their working arrangements to make sure they are classifying workers correctly.

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