



Factsheet Three

WHAT ARE THE DIFFERENT WAYS OF WORKING?

It is important to know whether you are a permanent or casual employee. The answer to this question will have a significant effect on your conditions of employment, including your pay.

What is a permanent worker?

A permanent full-time worker usually works 38 hours a week on a continual and regular basis.

A permanent part-time worker has continuous and regular work, and usually works less than 38 hours per week.

Permanent employees have continuity of employment, an expectation of ongoing work and are entitled to paid leave, such as (but not necessarily limited to) annual leave, personal leave (including sick leave and carer's leave), and parental leave (after 12 months service). Part time employees will accrue these benefits on a pro rata basis.

Permanent employees are also entitled to receive a minimum period of notice if they are terminated. This is based on the employee's length of service and must be given in writing.

What is a casual worker?

A casual worker is usually employed on a short term basis. Their employment is temporary and irregular and there is no guarantee of ongoing work. Casual workers are not usually entitled to notice of termination, redundancy payments, paid annual leave, paid sick leave, paid carer's leave, or parental leave (however, there may be an entitlement to parental leave if the employee has at least 12 months of regular and systematic employment and a reasonable expectation of the employment continuing). In compensation for this, casual workers are paid an extra loading on top of the hourly rate that would be payable to a full or part time employee performing the same job. This casual loading is prescribed in the relevant Modern Award or by the Fair Work Commission. As of 1 July 2016, the minimum casual loading is 25%.

Casuals are entitled to workers' compensation, and may be entitled to superannuation. See factsheet 6 *What is superannuation?* for more details.

Casuals may also be entitled to long service leave if they have worked for a sufficient period for the same employer.

If you are a casual and you work very regular and consistent hours (for example, if you work to a regular roster), and you have a reasonable expectation that work will continue you may be eligible for the right to make an unfair dismissal claim.

What is a fixed term contract?

A fixed term contract contains a specified beginning and end date. At the agreed end date, the contract will automatically expire without the need for either party to terminate the contract.

Fixed term contracts may be used for filling a position while a worker is on leave, for example, filling in for somebody who is on 12 months maternity leave or for completing a specific project like the introduction of a new computer program or to write a report.

In certain circumstances, some workers may be employed on fixed term contracts for positions that are ongoing and do not meet the above criteria. Workers who have been employed under successive fixed term contracts may be permanent employees.

Fixed term contract employees are entitled to annual leave and sick leave. Usually the allocation of leave is estimated at a pro rata basis. For example if you are employed on a fixed contract for 6 months, you would be entitled to 2 weeks annual leave (rather than 4 weeks which is the full annual entitlement).

Unless specified in the contract, if the employment is terminated by the employer prior to the end date specified in the contract the employer may be liable for the cost of paying out the remaining term of the contract. This will depend upon the wording of the contract and the circumstances of the termination. If you are concerned you should seek advice.

Am I an outworker?

If you do paid work in a private home (away from your employer's workplace) you may be considered to be an outworker. Outwork can include clerical work, sewing, computer processing, child care and food preparation. There are many outworkers in the clothing industry who work at home or outside a factory making garments or parts of garments.

As an outworker you are entitled to the same wages and conditions as workers in clothing factories. You may be covered by a Modern Award, or an agreement. You are also covered by the minimum conditions in the National Employment Standards.

Am I an employee or independent contractor?

There is a legal difference between being an employee and being a contractor, or self-employed. Sometimes this can be quite unclear. It is important to get advice on this, as the legal definition is complex and affects your pay and entitlements.

It is important to note that independent contractors are not covered by the National Employment Standards, cannot make a claim for unfair dismissal and must take out their own insurances like workers' compensation.

It is important to look at all of the circumstances of the work arrangement to decide whether someone is an employee or a contractor. Generally, contractors use their own tools, have their own insurance and can decide how they will do a job and what they will charge.

If you answer 'yes' to the following questions, you may be an independent contractor:

- Are you conducting a business in your own right, or do you appear to the general public to be working on behalf of the person for whom you perform the work?
- Do you control the way the work is to be done?
- Can you sub-contract the work to others outside the organisation?
- Do you have the option of performing work for a variety of people rather than just performing work for only one person or business?
- Are you paid on a fixed price basis on the completion of the task (whatever time it takes)?
- Do you supply special equipment or tools for the job?
- Do you have your own workers' compensation and public liability insurance?
- Do you make your own superannuation contributions?
- Do you pay your own tax?

If you are not sure, you should get further advice, and don't sign any contract before getting advice.

Trainees and apprentices

Apprentices and trainees are employed under a contract of training with a probation period of up to six months. Apprenticeships and traineeships are legally binding training arrangements between an employer and an apprentice or trainee that combines structured training, which may be delivered on site or off-the-job, with paid full-time or part-time employment. Apprenticeships and traineeships can also be school-based. Generally, an apprenticeship can take 3 to 4 years to complete, whereas a traineeship is usually only one year, but can vary up to 2 years for higher level qualifications.

The employer must allow apprentices/trainees to attend training as per the requirements of the training contract. Apprentices/trainees cannot be employed on a casual basis and

unless stated otherwise by a Modern Award, are paid for time spent at training.

After training is completed, a nationally recognised qualification and a certificate of completion are awarded. An apprentice or trainee can be signed off and receive a certificate of completion once they are deemed competent by their employer and registered training organisation.

Employers and apprentices/trainees may be eligible to access Australian and Northern Territory Government incentives. Information about these incentives can be accessed from Australian Apprenticeships NT.

Where can I get more help?

NT Working Women's Centre

Freecall: 1800 817 055

Web: www.ntwwc.com.au

Your Union

Unions NT

Ph: 8941 0001

Web: www.unionsnt.com.au

The Fair Work Ombudsman

Fair Work Info line: 13 13 94

Web: www.fairwork.gov.au

Australian Apprenticeships NT

Local call: 1300 137 130

Web: www.australianapprenticeshipsnt.com.au

To access an interpreter

Interpreting and Translating Service NT

Ph: 1800 676 254

Web: www.itsnt.nt.gov.au/

Aboriginal Interpreter Service

Ph: 8999 8353

Web: www.ais.nt.gov.au/

For people with a hearing and/or speech impairment

National Relay Service

Ph: 133 677

Freecall: 1800 555 677

The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.

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