



Hiring your own support workers

A guide to the law





This guide is written in an easy to read way.

We use pictures to explain some ideas.



The guide has been written by WA's Individualised Services (WAI S).



When you see the word 'we', it means WAI S.



Some words are written in **bold**.

We explain what these words mean.

There is a list of these words on page 56.



You can ask for help to read this guide.

A friend, family member or support person may be able to help you.



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About this document



This document is for people who decide to hire their own support workers.



If you decide to hire your own support workers, the law will give you some important responsibilities – things you need to do.



This document explains the laws that apply to hiring your own support workers.



Hiring your own support workers can give you more choice and control over the support that you receive.



This can make it easier to find the best support workers for your needs.

It also means you can choose:



- what work you want them to do



- when they should work



- how they should do the work.



Understanding the law is important because you need to know what's expected of you when you hire your own support workers.



The different laws may affect the way you budget and manage your support workers.

Your responsibilities

There are 5 main areas you need to think about:



- **Industrial Relations** – working together with your support workers to ensure support workers have a safe, fair and productive workplace.



- **Taxation** – paying income tax to the government



- **Superannuation** – adding to your support workers' retirement savings



- **Workers' Compensation** – insurance in case a support worker gets injured at work



- **Health and Safety** – making sure everyone is safe at work.



Each of these areas is covered by different laws, so you need to read them separately.



You also need to understand some of the different words that are used in the different laws.

For example, 'employee' might mean one thing for tax but another thing for superannuation.



You might need to get some advice to make sure you understand your responsibilities.

You could ask:



- a lawyer



- an accountant



- an advocate



- someone else you trust.

Industrial Relations



Industrial Relations

What are Industrial Relations?



Industrial Relations are the rules about how employers and employees work together.

These include how:



- employers should treat employees



- employees should work



- employees should be paid.

Which laws do you have to follow?



Some organisations need to follow the *National Fair Work Act*.

It is different for individuals and families who are hiring their own support workers.



You don't need to follow the *National Fair Work Act* unless you are a Constitutional Corporation.



Instead, you need to follow the *Industrial Relations Act 1979 (WA)*.



The *Industrial Relations Act* says employers must follow the *Minimum Conditions of Employment Act 1993 (WA)*.



The *Minimum Conditions of Employment Act* explains what your employee can expect, including:

- reasonable hours of work



- minimum rates of pay



- minimum leave conditions



- how employment can change.



You also need to:

- pay at least the Minimum Wage



- check if any relevant **award** applies

An award is a document that outlines what you need to pay and how to treat your employees.



Each award is based on the type of work people do.



In WA, there is an exception in the *Industrial Relations Act (WA)*.



There is an exception for people who work in domestic service in a private home.

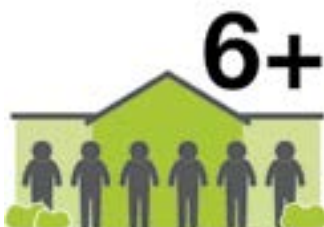
This may apply to you.



Not all support workers automatically fall into this exception.

You need to think about if your support worker is providing a domestic service and in a private home.

The exception does not apply when:



- there are more than 6 boarders or lodgers in a home



- someone else pays the employee, rather than the individual who lives in the home where they are being supported.



If you are not sure if this applies to you, we suggest that you get some legal advice.



It is important because it might have an impact on how you budget and manage your support workers.



If the exception applies to your support worker, it means that the *Industrial Relations Act 1979 (WA)* does not apply.



But there may be minimum conditions of employment that may still apply.

These are set out in the *Minimum Conditions of Employment Act 1993 (WA)*.



This includes the minimum wage.



Notes

Taxation

Tax

_____ = _____

_____ = _____



Taxation

What is taxation?



Taxation is paying a part of your income to the government.



A support worker who is getting an income may have to pay part of it as tax.



The government spends the tax money on things that we all need, like roads, schools and health care.

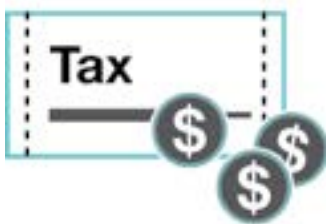


In Australia, tax is managed by the Australian Taxation Office, or ATO for short.

Is your worker an employee or a contractor?



You need to find out if your support worker is an employee or a contractor.



This is important because who pays the support worker's tax is different depending on whether they are an employee or a contractor.



Usually a contractor is responsible for paying their own tax.



This is why it is important to work out whether your worker is an employee or a contractor to avoid problems with taxation laws.

Employee	Contractor
<ul style="list-style-type: none">••••••	<ul style="list-style-type: none">••••••

We explain what the differences are between employees and contractors.

You can use these differences to decide if your support worker is an employee or a contractor.

Employees



Employers have more control over the way employees work than they do over contractors.



Employees are told how they should work, including:

- what they should do



- where they should work



- when they should work



- what they will be paid for the work.



Employees are paid based on how many hours they work.



Employees cannot get someone else to do the work for them.



You give your employee the equipment they need to do their job.



You are responsible for the work your employee does.

Contractors



Contractors decide how a job should be done.



Contractors run their own business.



Contractors are paid for finishing the job they were asked to do.



Contractors can get other people to do their work if they want to.



Contractors bring their own equipment to do the job.

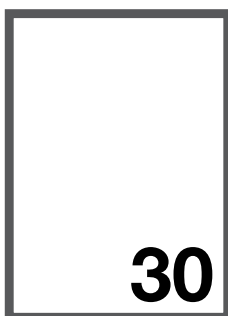


Contractors are responsible for their work.

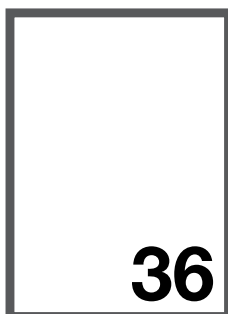
If something is wrong with their work, they have to fix it.



Contractors pay their own tax and, in some cases, their own superannuation.



We explain more about tax for contractors on page 30.



And we explain what superannuation is on page 36.

If your support worker is an employee



If your support worker is an employee, you must withhold tax.

Withholding tax means paying a part of your employee's wages to the ATO as tax.

To withhold tax, you need to:

1. Register for Pay As You Go (PAYG) withholding



You will need to fill out a form to register a PAYG withholding account

The form number is NAT 3377.

Application to register a PAYG withholding account: <http://bit.ly/2qsmvW>

WPN



You will get a Withholding Payer Number (WPN).

2. Get your employee's Tax File Number (TFN)



They will need to fill out a TFN Declaration form.

The form number is NAT 3092.

Tax file number declaration: <http://bit.ly/TFNdeclaration>

3. Work out how much tax you need to withhold

A screenshot of the Australian Taxation Office's 'Tax withheld for individuals calculator'. The form includes fields for 'Employment status', 'Employment type', 'Employment start date', 'Employment end date', 'Tax withheld for individuals', 'Tax withheld for individuals (if applicable)', 'Tax withheld for individuals (if applicable)', 'Tax withheld for individuals (if applicable)', and 'Tax withheld for individuals (if applicable)'. There are also buttons for 'Calculate', 'Print', and 'Download'.

You can use the ATO's calculator to work this out.

Tax withheld calculators: <http://bit.ly/TaxWithheldCalculator>



You don't pay this amount to your employee. You hold onto it until it's time to pay it to the ATO.

4. Report and pay withheld amounts to the ATO



You need to tell your employee how much tax you have withheld from each pay.



You need to tell the ATO how much tax you have withheld.

Then you need to pay the ATO that amount.

Paying and reporting withheld amounts: <http://bit.ly/ReportWithheldAmounts>

5. Make payment summaries at the end of the financial year



The financial year is different to a calendar year.

The financial year doesn't go from 1 January to 31 December.



The financial year goes from 1 July to 30 June.

At the end of the financial year, you need to:



- tell your employee:
 - how much you paid them that year
 - how much tax you withheld.



- tell the ATO:
 - how much you paid all your employees
 - how much tax you withheld.

6. Follow the ATO's instructions if your employee stops working for you

When a worker leaves: <http://bit.ly/2qyF6tC>

This includes:



- paying any final withheld amounts to the ATO



- sending your employee a payment summary by 14 July



- keeping their TFN declaration form until the end of the next financial year.

If your support worker is a contractor

If your support worker is a contractor, you need to:

1. Ask for their Australian Business Number (ABN).



If they need to register for an ABN, they need to go to this website:

Registration obligations for businesses: <http://bit.ly/2oSqYPo>



They will probably need the *ABN registration for individuals (sole traders)* form.

The form number is NAT 2938.

Sole trader: <http://bit.ly/2p381FW>



2. Check their ABN is still active at this website:

Search by ABN, ACN or name: <http://abr.business.gov.au/>

If their ABN is active, and they provide you with an **invoice** with their ABN, you do not need to withhold tax.

An invoice is a document that includes:

- a list of goods or services that need to be paid for
- the amount that needs to be paid.

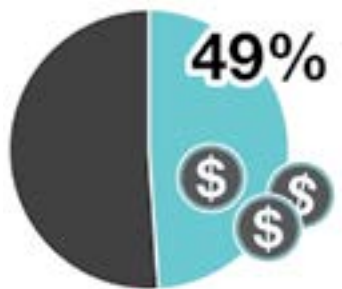




They have to pay their own tax.



If they will not give you their ABN, and will not register for one, you need to:



1. Withhold 49% of the payment.



2. Report and Pay the withheld amount to the ATO

Paying and reporting withheld amounts:
<http://bit.ly/ReportWithheldAmounts>



3. Give the contractor a payment summary when you pay them the rest of the amount.



You need to tell them how much tax you have withheld.



There are some exceptions for when a contractor does not give you their ABN.



You do not need to withhold tax if the contractor's work is completely private or domestic.



If it is completely private or domestic, the contractor needs to fill out a Statement by Supplier form and give it you, together with their invoice.

Statement by a supplier not quoting an AB:
<http://bit.ly/StatementBySuppliers>



You might like to get some advice about this.

If they are a volunteer



Volunteers offer to help because they want to.



Most of the time, they don't get paid for their work.



They aren't employees or contractors.



The ATO has more information about paying volunteers.

Paying volunteers: <http://bit.ly/ATONonProfitVolunteers>



Notes

Superannuation



Superannuation

What is superannuation?



Superannuation is paying money into an employee's superannuation fund.

Lots of people call superannuation 'super'.



A super fund is like a special bank account used to save for retirement.



People add to their super fund throughout their working life until they retire.

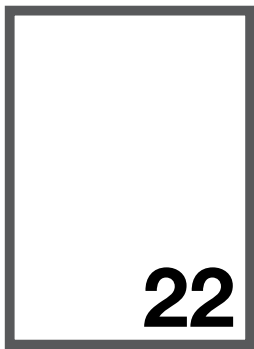


Usually, they can only access the money in their super fund after they turn 65.

Do you need to pay superannuation?



You need to work out if your support worker is an employee or a contractor.

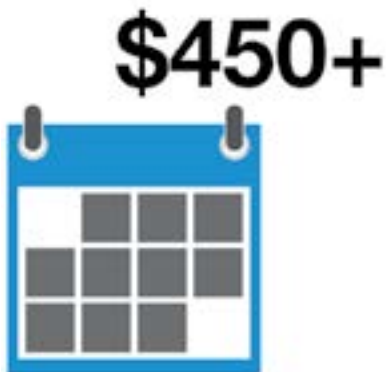


We listed the differences between employees and contractors on page 22.



You can use these differences to find out if your support worker is an employee or a contractor.

If your support worker is an employee



Employers need to pay super if their employee earns more than \$450 per month before tax.

There is another rule if the work is 'private and domestic'.

This means work that is:



- for the person paying for the work

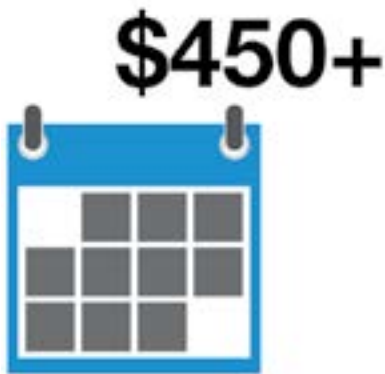
OR



- for the person's house, home or family.

This rule may apply to you.

If this rule applies to you, you will need to pay super if your support worker:



- earns at least \$450 per month before tax

AND



- works more than 30 hours per week.



If they don't do both of these things, you do not need to pay super.

If your support worker is a contractor



If your support worker is a contractor, you are not required to pay super.

There is another rule if their contract is mostly for their labour.



If the work they are doing is their own physical and mental effort, it is called 'their labour'.



In this case, they are treated the same as an employee and you may need to pay super.



The same rules about super apply to them as any other employees.

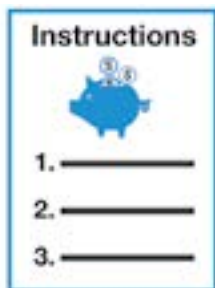
How to pay super

To start paying super, you need to:

1. Set up super

You need to follow the ATO's instructions to set up super.

This means:



- Choosing a default fund.

This is where money goes if your employees don't choose their own fund.

- Offering your support worker a choice of fund.

You need to give your support worker a form to fill out so it goes to their fund.

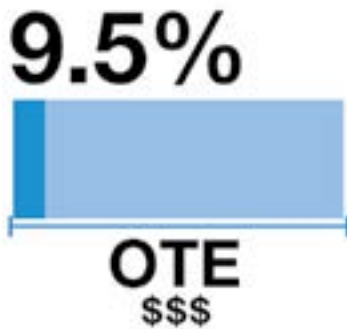
- Sending your support worker's Tax File Number (TFN) to their fund.

You need to do this so the ATO can keep track of where the support worker's super is.

- Keeping records.

This means writing down how much super you are paying.

2. Work out how much to pay



At the moment you need to pay 9.5% of your worker's ordinary time earnings (OTE).



OTE is the amount they earn for how many hours they usually work.



More information is available at this website:

How much to pay: <http://bit.ly/HowMuchSuperToPay>

3. Pay the super

You can pay super using the ATO's Small Business Superannuation Clearing House.



Small Business Superannuation Clearing House sends super payments and information electronically. This makes it easier and faster.



You can find out more about Small Business Superannuation Clearing House here:

Paying super contributions: <http://bit.ly/PaySuper>



Notes

Workers' compensation



Workers' compensation

What is workers' compensation?



Workers' compensation is money that is paid if a worker gets hurt at work.



All employers must have insurance in case someone gets hurt at their workplace.

Do you need workers' compensation insurance?

You will probably need workers' compensation insurance.



However, if your support worker is a director of a Pty Ltd company, you may not need workers' compensation insurance.



You can ask your support worker if their ABN is a Pty Ltd company.



If you are not sure, you can get legal advice.

What type of workers' compensation insurance would you need?



You need a specific type of insurance called Private Households Employing Staff.

The Insurance Code is 97000.

How do you get workers' compensation insurance?



You can set up workers' compensation with many insurance companies.

The following are some companies that understand the type of workers' compensation you need to have:



- CGU – telephone **13 24 81**
- Allianz – telephone **13 10 00**
- GIO – telephone **13 10 10**
- QBE – telephone **13 37 23**

More information



There is more information about your responsibilities at this website:

[Understanding your rights & obligations:](http://bit.ly/WorkCoverRights)
<http://bit.ly/WorkCoverRights>



There is also a guide for employers about workers' compensation at this website:

[WorkCover WA: http://bit.ly/2eBWUOV](http://bit.ly/2eBWUOV)



Notes

Notes

Health and safety



Health and safety

Safe and healthy workplaces



As an employer, it is your job to make your workplace as safe as possible.

This means you have to make sure:



- Your workers are not exposed to things that might hurt them or someone else.



- Your workers know about safety.

This might mean they need:

- training
- instructions
- information.



- You and your worker regularly check the safety of your workplace.

As an employer, it is also your job to tell your employees:



- what to do in an emergency



- what to do if they are injured



- their rights to workers' compensation if they are injured.

If an issue comes up

If your support worker tells you about a health and safety issue, you should:



- check the issue



- fix the issue if you need to



- tell your worker what you have decided.



You need to tell WorkSafe if an injury or death occurs at your workplace.

More information



You can find out more at this website:

[Employers – your responsibilities: http://bit.ly/WorksafeResponsibilities](http://bit.ly/WorksafeResponsibilities)



You can also fill out this quiz to see if you have done enough to make your workplace safe:

[Small business safety: http://bit.ly/SmallBusinessSafety](http://bit.ly/SmallBusinessSafety)

Word list



Award

An award is a document that outlines what you need to pay your employees.

It is based on the type of work people do.

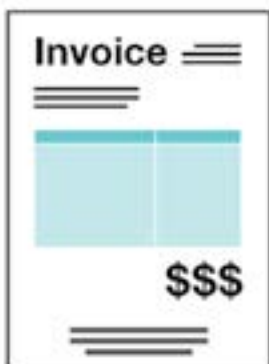


Industrial Relations

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- employers should treat employees
- employees should work
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More information



If you have any questions, please contact us.



Phone WaiS on 9485 1997



WA's Individualised Services

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[WA's Individualised Services:](http://www.waindividualisedservices.org.au)

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