

A chef with a beard and tattoos, wearing a plaid shirt and a dark apron, is working in a kitchen. He is looking down at a grill. The background shows a restaurant interior with tables and chairs. The image has a red overlay on the left side.

Industry e-guide

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# Hospitality

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# Introduction

Business owners and employers working in the hospitality industry in Australia face a number of unique challenges. Latest figures released by the Fair Work Ombudsman (2016-17 report) reveal the industry employs 7% of the national workforce, yet accounts for 17% of workplace disputes, the highest industry percentage. A young, temporary workforce underpins some of the common concerns hospitality employers come to Employsure with. Questions on managing young workers, apprentices and visa holders are common, especially with the introduction of the Fair Work Amendment (Protecting Vulnerable Workers) Act this in 2017.

Another major concern for hospitality employers is how to manage staff requirements despite the expectation of fluctuating and seasonal work. Casual work can provide flexibility for employers, but costs can easily become unmanageable, and many employers are unaware certain casual employees still receive some of the entitlements permanent employees do. Modern Award changes introducing casual conversion clauses has caused alarm for many in the hospitality industry as it will allow casual workers a right to request permanent employment after 12 months.

An abundance of shift work in the hospitality industry means employers come to Employsure for advice on managing public holiday entitlements, annualised salaries, drugs and alcohol in the workplace and employee termination.

Finally, due to the physical nature of the work, health and safety is a major issue in the hospitality industry, particularly with a young and inexperienced workforce. With these issues considered, the FWO announced hospitality will be a major focus of investigations going forward. This e-guide brings together our top tips and advice, so employers in the hospitality industry can get prepared.

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The hospitality industry employs **7%** of the Australian workforce, but accounted for **17% of all disputes** reported to the Fair Work Ombudsman last year.

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Chapter 1

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# Vulnerable workers

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The Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 came into effect late last year. The law was created in response to several high-profile cases of underpayment and exploitation in the franchise and hospitality industry. Typically hiring individuals from a number of “vulnerable” categories, like young people and visa holders, hospitality employers should be especially careful to ensure they are informed of relevant workplace legislation.

## Young workers

Employers in the hospitality industry will inevitably be faced with managing young workers as 45% of the industry is staffed by those aged between 15 and 24. Young workers are considered vulnerable employees due to their inexperience in the workplace, and potential for exploitation. When hiring young workers, employers need to be especially careful all record keeping and entitlements follow the relevant legislation.

The FWO announced in 2017, despite only making up 15% of the workforce, young workers accounted for 28% of total disputes, and 44% of court cases in 2016. While employers overwhelmingly do not intend on exploiting young workers, the complexity of legislation can lead to costly mistakes. Getting informed on the rules surrounding young workers and seeking professional advice on unclear workplace questions can greatly reduce the risk to employers.

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The hospitality industry had the **highest number of anonymous reports** to the Fair Work Ombudsman (2016-17) at **36%**.

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# Employing young workers

Legislation on young workers is set by state and territory, and varies greatly. Employers wishing to hire young workers should consult with the relevant state body and to not assume there is national consistency.

## Legislation may include:

- minimum age for starting work
- requirements for parental permission if an employee is under a certain age
- additional supervision requirements for young workers
- particular age-appropriate tasks
- maximum hours of work per week
- restricted start and finish times
- additional break periods
- a tiered system of rules for different age groups
- exceptions or different rules for working in a family business

# Checklist for inducting young employees

- give all employees a fair Work Information Statement, required by law
- provide an employee handbook detailing policies and procedures specific to the business
- walk all employees around the work premises and identify all risks
- encourage reporting of workplace hazards
- ensure there is a way new starters can make bullying complaints

# Hiring apprentices

The hospitality industry is the fourth largest employer of apprentices in Australia, and Employsure receives many requests for advice on how to manage the process correctly.

## Where to start

When employing an apprentice, employers need to ensure a formal training agreement in place with the apprentice and the apprentice is enrolled with a Registered Training Organisation (RTO). The training agreement and training plan (prepared by the RTO) must be approved by the State or Territory Training Authority (STA). As the training agreement usually only focuses on training obligations, Employsure suggests employers still ask the employee to sign an employment contract, which sets out the employee's obligations and provides wider protection for the employer.

Apprentices may only be employed on a permanent basis (either full-time or part-time) but not as casuals, and are generally engaged for three or four years.

## Entitlements for apprentices

Apprentices are generally entitled to the same allowances, overtime, breaks and the National Employment Standards as other permanent employees. Their pay and conditions, entitlements to reimbursement for training fees, payment for training time and other entitlements are generally governed by the modern award applicable and training and employment contracts.

The law surrounding apprentices varies from state to state and depends on the terms of the Modern Award applicable to your business, as well as the terms of the training agreement. As a general overview, apprentices must be provided with access to appropriate tools and equipment, and adequate supervised training to acquire the knowledge and skills needed to advance.

Apprentices must be enrolled in an approved training course with an RTO, have a training plan and be allowed time off to attend formal training. This may involve attendance at a training institution, formal training in the workplace or self-paced learning.

Employers must keep records of the apprentice's hours of work and training. As for all employees, employers are also responsible for providing a safe working environment for the apprentice. This is especially important as inaccurate record keeping is to be a major focus of the FWO following the introduction of recent amendments to the Fair Work Act.

## Trainee and apprentice pay rates

The rate of pay for trainees is outlined in the National Training Wage Schedule. Although, those employees starting a traineeship covered by a registered agreement should check the agreement for the correct rates of pay. Importantly, employees can only be paid trainee rates of pay if they have signed a formal contract of training with their employer and an RTO.

## Are trainees and apprentices paid while training?

Where trainees attend formal training provided by the RTO they are entitled to be paid, unless they are either a school based trainee or a part-time trainee whose entire training is provided off the job.



## Visa holders

A second category of vulnerable workers hospitality employers should be aware of is those employees from overseas working on a visa. The FWO recently stated 31% of hospitality workers involved in a complaint were visa holders.

The Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 (Act) substantially increases the maximum penalties which apply for certain 'serious contraventions' of the Fair Work Act. The maximum penalty will increase from \$12,600 to \$126,000 per contravention for individuals, and from \$63,000 to \$630,000 per contravention for corporations. Recent high-profile cases of underpayment such as 7-11 and Dominos involved serious contraventions, and mostly impacted visa holders.

Even more alarming for employers, is the FWO being given stronger powers during the investigation process. This is an increase in the already substantial powers available to the FWO, enabling the agency to issue notices to anyone demanding information or documents relevant to their investigation, and actively pursue anyone hindering an investigation.

The new law means there are harsher penalties for serious breaches of employment entitlements and record keeping failure. If an employer fails to keep records and an employee claims they have been underpaid, the employer must also prove they did in fact meet their obligations and paid the employee correctly.

# What should hospitality employers watch out for?

## The following changes are now in effect:

- increased penalties for serious violations of the Fair Work Act; where an employer is knowingly breaching their obligations and is doing so systematically
- employers requiring 'cashback' from current or prospective employees is prohibited (ie unreasonably making an employee spend or pay money for the benefit of the employer)
- increased penalties for employers breaching their record-keeping and pay slip obligations such as failing to keep accurate records or providing false or misleading information to their employees
- stronger powers for the FWO to investigate breaches of the Fair Work Act

While most of these points should not seriously impact employers trying to do the right thing, Employsure predicts the greatest impact for small businesses will be in the area of record keeping. Already, nearly 1 in 5 calls across the Employsure advice line from employers in the hospitality request clarification on documentation, and with penalties set to rise for non-compliance, this is set to be a priority for employers going forward.

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According to figures released by the Fair Work Ombudsman, the hospitality industry was issued **the highest number of infringement notices last year**, making up **39%** of all cases.

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# What records do employers have to keep?

Regardless of size and industry, all employers need to keep employee records for seven years. In addition to what type of information needs to be kept, employers need to be aware of who can access the records and what happens if records aren't kept.

## **Employees must keep records of:**

- employee name
- ABN
- type of employment
- employee start date and end date
- any overtime paid
- details of any arrangements made to average hours
- leave entitlements
- leave taken
- leave cashed out
- full details of superannuation contributions made
- all details of termination
- workplace flexibility agreements
- guarantees of annual earnings given to employees



# Pay slip obligations

Employers must issue a pay slip within one working day of paying an employee, and these can be either electronic or a hard copy.

## **Pay slips must contain:**

- employer's name and ABN
- employee's name
- pay period dates
- date the payment was made
- employee's hourly rate
- number of hours worked, or salary details
- gross and net amounts of the payment
- bonuses, loadings, allowances, penalty rates, incentive based payments
- details of any deductions from the employee's pay
- details of any superannuation contributions made

## **Who can request employment records?**

- employees – current and former
- Fair Work inspectors
- union officials (in some cases only)

## **When must the records be made available?**

An employer has three days to provide on-site access or 14 days to post a copy of the records.

As of September 2017, penalties for non-compliance of record keeping have increased and employers who cannot give a reasonable excuse for non-compliance must disprove wage related claims in court. Employsure recommend employers take the time to examine their own records keeping practices, and get professional advice if there are any concerns.

# Franchisors in the hospitality industry

For franchisors, there is now the potential for liability where a franchisee breaches the Fair Work Act. The changes have been based heavily around underpayments and failing to keep employment records. For example, if a franchisee underpays an employee or breaches the Modern Award, depending on the relationship, a franchisor may also be liable for a breach of the Act. The franchisor will be liable if:

- the franchisor has a significant level of influence or control over the franchisee entity's affairs: and
- the franchisor knew or could reasonably be expected to have known the franchisee's contravention would occur: and
- the franchisor did not take reasonable steps to prevent a contravention of the same or similar nature

## What does this change mean for franchisees?

Franchisees should be aware franchisors may now be asking to see evidence to determine whether franchisees have complied with workplace laws. This may take the form of an assessment of the franchisee's systems and processes and the monitoring and auditing of franchisee compliance.

Franchisors may also now be playing a larger role in assisting and educating franchisees with respect to their obligations under workplace laws.

Both parties should ensure they are aware of the contents of the franchise agreement and they are complying with the agreement and with privacy principles



Chapter 2

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# Wages and entitlements

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# Wages and entitlements in the hospitality industry

Work in the hospitality industry fluctuates dramatically by season and time of day and one of the top employer concerns is managing the cost of salaries and wages. While casual employment can give hospitality employers the flexibility which may be required, costs can be much higher, especially considering the additional loadings for public holidays and shift work, unavoidable for many restaurants, bars and cafes.

## **Modern Awards relevant to the Hospitality Industry**

The first step in determining the wages and entitlements of a new employee is by checking the Modern Award relevant to their role.

## **Common Awards for the Hospitality Industry**

- Fast Food Industry Award 2010
- Hospitality Industry (General) Award 2010
- Racing Clubs Events Award 2010
- Live Performance Award 2010
- Registered and Licensed Clubs Award 2010
- Restaurant Industry Award 2010

# Casual employees

Due to the irregularity of work, many businesses in the hospitality industry hire casual workers. In addition to the entitlements outlined in the Modern Award they are covered by, it is important employers are also aware of these important facts about casual work:

- an employment contract must be provided, making clear the casual nature of employment
- there is no guarantee of hours or obligation to be available for work
- casuals have no right to paid leave, they receive casual loading instead
- there is a provision for unpaid compassionate and unpaid carers' leave
- unfair dismissal claims can be lodged if employment is regular and systematic and they have been employed for the minimum employment period
- there is a legal expectation to have protection from bullying and discrimination
- health and safety training must be provided
- usually casual employees do not receive public holidays off with pay but this depends on the Award they are covered by
- if an employee is employed on a 'regular and systematic' basis, they are entitled to 12 months of unpaid parental leave

# Casual conversion changes

While employers may choose to bear the cost of hiring casual workers to receive the flexibility they desire, a change to a number of Modern Awards will allow casual workers to request permanent employment after 12 months of continuous service.

## What are the changes?

Casual employees with 12 months of service will be able to request full-time or part-time status under 85 of the Modern Awards which currently do not contain a casual conversion clause.

## Can an employer refuse a casual employee's request?

An employer can refuse a request following consultation with the employee. This refusal may be based on a number of specific grounds, including if it would create a significant adjustment to the employee's hours of work to accommodate them in full-time or part-time employment in accordance with the terms of the applicable Modern Award. An employer can also refuse the request if they can reasonably foresee their position would no longer exist in the following 12 months, or on other reasonable grounds informed by current or foreseeable facts.



# Annualised salaries

Due to the high costs of hiring casual workers and complexity of calculating loadings and entitlements on a weekly basis, many employers in the hospitality industry choose to offer annualised salaries. Advice surrounding how to annualise salaries is one of the most common questions Employsure receives from employers in the hospitality industry.

## What is an annualised salary?

An annualised salary is an agreement between employer and employee (other than managerial staff of hotels) where a fixed annual salary is agreed upon. The final figure should be at least 25% above the minimum wage for the employee under the Award, multiplied by 52. As the salary cannot be below what the employee would have been entitled to if all Award overtime and penalty payment obligations had been met, it is important that any annualised salary calculation is compared against the award and adjusted if needed. The major benefit of this arrangement is it allows employers to reduce complexity and inefficiencies with administrative costs where the employer has a set roster the employee works every week. It is important employers understand not all Modern Awards allow annualised salaries, and as calculations can be complex, it is best to consult a workplace specialist before offering an annualised salary to staff.

# Rosters and hours of work

Modern Awards and enterprise agreements have a term that requires employers to consult with employees about changes to their regular roster or ordinary hours of work. With hours fluctuating in the hospitality industry, employers are often unclear about their obligations to employees when it comes to changing working hours.

## Who must be consulted?

- full time employees
- part time employees
- casual employees who have and rely upon regular and systematic working arrangements.

## Employer obligations

Employers have an obligation to:

- provide affected employees and their representative with information about the proposed change;
- invite employees to give their views about how the changes will affect them (eg in relation to family and carer responsibilities); and
- give consideration to any views from the employees concerned about the impact of the proposed change.

This means an employer will breach the obligation if it makes a final decision before consultation with its employees. Employers should also ensure their policies and procedures comply with these consultation obligations.

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According to the Fair Work Ombudsman (2016-17 report), the hospitality industry had the **highest number of court actions** last year, making up **27%** of total cases.

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# Public holidays

With many businesses in the hospitality industry experiencing their busiest periods during public holidays, employers need to be aware of the different employee entitlements.

## What is the entitlement?

An employee is entitled to be absent from work on a day or part day which is a public holiday in the place where the employee is based for work purposes. However, an employer may request an employee to work on a public holiday if the request is reasonable. If the employer makes the request the employee can only refuse if the request is unreasonable or their refusal is reasonable.

## How to determine what is reasonable?

In determining whether a request or a refusal is reasonable, the following factors must be taken into account:

- the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee
- the employee's personal circumstances, including family responsibilities
- whether the employee could reasonably expect the employer might request work on the public holiday
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration which reflects an expectation of working the public holiday
- the type of employment, ie full time, part time, casual or shiftwork
- the amount of notice in advance of the public holiday given by the employer when making the request
- in relation to the refusal of a request the amount of notice in advance of the public holiday given by the employee when refusing the request
- any other relevant matter

# Are employees paid if they are absent from work on a public holiday?

If a permanent employee is absent from work on a public holiday in accordance with the National Employment Standards, then they are entitled to payment for their ordinary hours of work on that day. Casual workers are not entitled to be paid if they do not work.

# Are employees entitled to penalty rates or a day in lieu?

Arrangements for payment of penalty rates or days in lieu when an employee works on a public holiday are not set out in the National Employment Standards. These entitlements are generally provided through Modern Awards, agreements or contracts of employment and can vary. Employers should consult the Award their employee falls under for further information.



# Change in Penalty Rates.

In 2017 a decision was made to reduce penalty rates for employees in several industries – including fast-food, hospitality, and restaurant.

The changes for hospitality and fast-food will roll out gradually over the coming years – Sunday penalty rates will consistently fall until 1 July 2019. This will affect penalty rates for both casual and permanent employees.

The below table is a guide to some of the changes, for more information contact your workplace relations specialist.

<b>HOSPITALITY AWARD (SUNDAY WORK)</b>		
<b>Effective period</b>	<b>Penalty Rate (Sunday Work)</b> (Full-time and part-time employees)	<b>Penalty Rate (Sunday Work)</b> (Casual employees)
1 <sup>st</sup> July 2017 to 30 <sup>th</sup> June 2018	170%	175%
1 <sup>st</sup> July 2018 to 30 <sup>th</sup> June 2019	160%	175%
1 <sup>st</sup> July 2019 onwards	150%	175%

<b>FAST FOOD AWARD (SUNDAY WORK)</b>		
<b>Effective period</b>	<b>Penalty Rate (Sunday Work)</b> (Level 1 full-time and part-time employees)	<b>Penalty Rate (Sunday Work)</b> (Level 1 casual employees)
1 <sup>st</sup> July 2017 to 30 <sup>th</sup> June 2018	145%	170%
1 <sup>st</sup> July 2018 to 30 <sup>th</sup> June 2019	135%	160%
1 <sup>st</sup> July 2019 onwards	125%	150%



Chapter 3

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# Drugs and alcohol

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# Drugs and alcohol in the workplace

Restaurants, bars and cafes in the hospitality industry often serve alcohol, and this environment, combined with a young, casual workforce can be a recipe for disaster if not managed correctly. The Australian Drug Foundation lists the industry as particularly prone to both alcohol and drug use and Employsure receives many calls for advice on managing this issue in the workplace.

## Creating a policy

First and foremost, in dealing with drugs and alcohol in the workplace a clear policy is required. A drug and alcohol policy should outline employee expectations, and make clear the penalties for non-compliance. A written policy gives employers the authority to take action if an employee is in breach of the policy.

Alcohol can be a complex issue. As with any workplace, alcohol may be served on occasion as part of a special event or for team bonding. In the hospitality industry, it is not uncommon for staff to have a beer or wine after they clock off. This can be a complex issue for employers because on one hand, the social aspect of sharing a drink after work on the premises can be a team building experience and keep workers committed to their job, particularly in an industry with high staff turnover. On the other hand, even a small amount of alcohol can have unpredictable effects on some people, and there may be an increased risk of violence between employees, or a risk to health and safety.

The risks and benefits should be carefully considered by every employer in discussion with a workplace specialist who can assist with drafting a policy. One compromise might be a zero-tolerance policy for consuming alcohol before or during a shift, however employees may have 1 or 2 drinks after work at the full discretion of a manager. Regardless of the policy, it is important to enforce it equally and fairly to ensure there are no claims of discrimination.

# Drug and alcohol use on the job

Employers have a duty to ensure a safe and healthy workplace for all workers. The use of alcohol and drugs on shift becomes a health and safety issue because a person's ability to exercise judgment, coordination, motor control and alertness can be affected, leading to an increased risk of injury. Further, the impairment of behaviour can cause affected employees to injure themselves or others. The alcohol-affected person may not be able to make an accurate assessment of their fitness for work due to intoxication or hangover effects.

Employers are well placed to respond to and create supportive and healthy workplace environments and safe workplace culture, aimed at preventing and managing alcohol-related harm which benefits both the workplace and individual employees.

## Approaching a worker who may be under the influence

Approaching a person who is under the influence of alcohol or other drugs requires skill and sensitivity to achieve the best outcome for all in the workplace. When establishing a policy, consideration should be given to designating and training persons to approach workers who are displaying signs of being under the influence of alcohol or other drugs. Suitable persons may include managers, supervisors, health and safety representatives or other persons who have appropriate knowledge, experience and/or qualifications such as counselling. It is important designated persons are aware of the most effective approach.



# Disciplinary procedure

A procedure for the counselling and, if necessary, discipline of employees should be consistent with existing awards, agreements and other disciplinary measures which apply in their workplace. Disciplinary action may include termination of employment taking into account the seriousness of the breach.

## Checklist for employers

- Create a firm no-tolerance policy for drug use in the workplace and the consumption of alcohol while working.
- Write this policy into the employee handbook, including penalties for non-compliance.
- Ensure all managers know to enforce the policy equally.
- Train managers in the safest, most effective way to approach an employee who is under the influence.
- Consider the culture of the workplace and in consultation with a workplace specialist, write a company policy on alcohol use outside the official working hours.

# Workplace surveillance

Surveillance of employees is not a new workplace issue. However, technological developments and advances have continued to enhance the employers' ability to monitor employee conduct in the workplace. Due to the nature of bars, cafes and restaurants, it is common to have CCTV monitoring the venue in case of any incident.

Employee theft is also a major issue faced by the hospitality industry due to the young, transient workforce and cash handling nature of the work. The employer and management cannot be everywhere at once and therefore surveillance is a practical way of tracking and safeguarding against misconduct, provided it is compliant with relevant laws. Each State has its own legislation concerning surveillance so it is important employers are aware of and comply with the relevant legislation for their State. While employers will often rely on witness evidence in disputes, employers can also seek to rely on surveillance material.

## What are the rules?

Whilst there are some federal and state laws relating to surveillance, the law appears to have fallen behind technology.

## Can surveillance evidence be relied upon during disputes?

Evidence obtained from surveillance systems will not always be accepted or treated favourably in disputes. Surveillance evidence will generally need to be legally obtained in order to be admissible in a court. A court has the discretion to exclude evidence that was obtained 'improperly or in contravention of an Australian law', unless 'the desirability of admitting the evidence outweighs the undesirability of admitting evidence'.

## Introduction of change and consultation

Employers should be aware if there is no surveillance system in place, its introduction may constitute a significant workplace change which would require it to be dealt with under a consultation clause in an applicable modern award or enterprise agreement.

The consultation process usually is required to be enacted if the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise and the change is likely to have a significant impact on employees at the enterprise. The provision requires the employer to notify employees and any bargaining representatives of this proposed change, and consult with them regarding the change, including any measures to avert or mitigate any adverse effect on employees.

## Best practice process for introducing workplace surveillance

It is recommended employers ensure as far as it is possible, workplace surveillance is transparent and employees are formally notified about when and how the surveillance will operate. This could be done by way of provisions within an employee handbook, through training and through other means of communication regularly used within the business.



A woman in a red blazer is talking on a black smartphone. In the background, another person wearing a black apron is working at a counter, possibly in a cafe or office setting. The scene is brightly lit with natural light from a window.

Chapter 4

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# Employee performance

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Employees not performing as expected can be a major frustration for employers in the hospitality industry. Due to a high staff turnover and reliance on casual employment, it can be a challenge to follow the same performance management procedures as other industries.

To resolve poor performance in the workplace, hospitality employers should first determine whether the employee is incapable of performing the task or role in question, or whether the issue could be considered misconduct or serious misconduct instead.

Once this has been identified, the issue can be addressed accordingly.

## Employee performance

Poor performance is when an employee tries as hard as possible but keeps falling short because they lack skill, ability or training for the tasks required of them. One of the ways employers can stay competitive in the hospitality industry is by making sure all employees are performing at their best. Managing performance well creates a more productive and harmonious workplace because employees can see the value of their work, and staff turnover is likely to be lower.

If there is a gap between an employee's performance and what an employer expects, this should be addressed early. Employers should set out clearly how they are expected to improve, with measurable targets.

If an employee still does not improve after retraining or other efforts, employers can begin the formal performance management process set out in the employee handbook. Employers should follow this process to the letter before considering ending employment on these grounds, to avoid any chance of an unfair dismissal claims.

Poor performance or underperformance can show up as:

- failure to do the duties of the role or meet the standard required
- not meeting KPIs or SLAs
- not following management directions in error or because of a lack of understanding

# Misconduct

Misconduct is when the employee could perform better but for whatever reason chooses not to. Almost 25% of hospitality employers calling the Employsure advice line are looking for assistance with managing difficult employees, and a further 19% need help with employee termination, so it is a major issue for the industry. Misconduct is behaviour which is not acceptable at work. These employees are usually aware their behaviour is not allowed, although this is not necessarily the case. Employers should provide an employee handbook to all staff which includes examples of misconduct and describe the possible consequences of it.

## Repeated misconduct

As its name suggests, repeated misconduct is the continued transgression of an employee from their expected professional behaviour. This can cover a wide range of different aspects to their time at work, whether it be lateness or absenteeism, intentionally underperforming or acting inappropriately in the workplace. It is important to note though for acts of misconduct to be deemed as repeated misconduct, the employee must have previously been given the opportunity to improve.

## How to manage repeated misconduct

While it can be tempting to immediately terminate an employee following an instance of repeated misconduct, it is important to handle the situation appropriately. An employee should be warned, ideally in writing, before ending their employment. This written notice should be detailed and include specific information around the reasons for the warning, a description of their repeated misconduct and the potential consequences of their continuing to act in this manner ie termination of employment could result should they not rectify the offending behaviour.



## Warning letters

In cases of repeated misconduct, it is important to provide employees with a written warning allowing them to improve their performance. If a decision is later made to terminate employment, it is important to demonstrate an opportunity for improvement has been clearly conveyed to the employee.

## Serious misconduct

Serious misconduct is behaviour so serious that an employer is entitled to dismiss an employee for the first offence. The Fair Work Regulations define serious misconduct as behaviour which could threaten the business itself or other employees, suppliers or customers. Usually, it means theft, fraud, assault, or intoxication at work.

It is important to include a clear definition of serious misconduct in the employee handbook and make sure all employees have read it. Some types of behaviour will still be seen as serious misconduct, even if they are not included in a handbook. Always clearly set out the consequences for serious misconduct and the disciplinary procedure which follows.

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In cases of serious misconduct, it is **not enough** just to have it included in your employee handbook. You will need to demonstrate this conduct (and its consequences) was serious enough to warrant instant (summary) dismissal. Employers need to **follow the disciplinary process to the letter** before ending someone's employment because of serious misconduct.

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# How to dismiss an employee

As an employer, it is important to follow guidelines and make sure an employee is only being dismissed on fair grounds. If the correct process is not followed there is a risk an employee could lodge a successful claim for unfair dismissal.

## What is a fair reason for dismissal?

Generally speaking, a fair reason for dismissal falls into one of the following categories:

- **Capacity:** The employee lacks the ability to complete the job.
- **Performance:** The employee's performance is below what is required for the job, or they are not meeting the standards outlined in their employment contract.
- **Misconduct:** The employee's behaviour is below workplace standards, or they take part in serious misconduct.
- **Redundancy:** The job which the employee was previously completing is no longer necessary for the business, or technology has made their role unnecessary.

# Termination of employment

One of the most difficult things for employers to understand and manage correctly within their organisations, big and small, is termination of employment.

There are many reasons why an employment termination may be necessary, but regardless, employers need to provide employees with a minimum notice period if they are going to have their employment terminated.

This notice period is a requirement under the National Employment Standards (NES) and as such must be observed by every business in Australia. The length of notice period required is based on years of service.

## How much notice do I have to give?

Period of employment	Minimum notice period
Less than 1 year	1 week
1-3 years	2 weeks
3-5 years	3 weeks
Over 5 years	4 weeks

### Important to know

- If an employee is over the age of 45 and has worked for at least two years on the day you give them notice, they are entitled to an extra week's notice.
- If an employee's agreement or contract specifies a longer notice period for termination, then it is the specified notice period which applies.

# How to end employment

It is important employers follow correct procedure in carrying out a termination of employment, in order to reduce risks of successful employee claims.

It is necessary to give the employee written notice of the last day of employment by way of a termination letter. It may be given personally, left at the employee's last known address or sent by prepaid post to that address.

Depending on the personal relationship with the employee and the circumstances, it is up to the employer to decide which method of delivering the notice is adequate. Once an employee has been given notice of their termination, there are two options; the employee may either work through their notice period, or you can pay out the full amount of the notice period to them (known as pay in lieu of notice). Pay in lieu of notice may include bonuses, loadings, allowances, penalty rates and overtime depending on the Award covering the employee.

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**Employers need to know** if an employee thinks they have been unfairly dismissed, or if they feel their dismissal was not handled fairly, they can lodge an application for unfair dismissal.

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A woman with blonde hair, wearing a red plaid shirt, is cleaning a wooden table with a yellow cloth. The background is a blurred restaurant setting with shelves of bottles.

Chapter 5

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# Workplace health and safety

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## Vulnerable workers

In the area of workplace safety, once again the large percentage of vulnerable workers in the industry should be considered. Often low-skilled and working part time or casually, young workers and visa holders are at greater risk of workplace illness and injury. Young employees may not have gained enough knowledge to understand the risks which may appear obvious to more experienced workers, and visa holders may be unfamiliar with Australian workplaces, or afraid to speak up. When inducting new employees, employers should take the time to train all staff on the specific hazards of the workplace and make it clear any potential safety risks should be reported to management.

The potential for workplace bullying is another concern for employers in the hospitality industry. Young workers and visa holders are more vulnerable to bullying, and less likely to report any adverse behavior. Bullying at work occurs when a person or a group of people repeatedly behaves unreasonably toward a worker or a group of workers at work and the behaviour creates a risk to health and safety. All employers should have a bullying policy, and ensure employees have a way to report their experiences.

## Workers compensation claims

With any perceived unsafe physical or psychological incident comes the risk that an employee could raise a claim for compensation. Whatever the incident, recording and reporting are a must. Recording an incident and reporting it to any relevant party eg workers compensation insurer or, depending on the circumstances, the safety regulator, are vital steps to be taken, even if no action is needed.

# Physical health and safety issues

Latest figures from SafeWork Australia reveal employees in the hospitality industry make 6,600 serious workers compensation claims each year, with most being made for falls. It is important employers consider all the hazards in their workplace and ensure all staff are trained accordingly. Potential hazards for the hospitality industry include:

- manual handling injuries
- electric shocks
- burns from cooking
- cuts from broken glass or knives
- hearing damage from a noisy workplace
- violence and aggression from patrons
- hazardous substances in cleaning products
- falls due to wet or slippery floors

# Accidents at work

An employer cannot always prevent accidents from happening at work but they have a duty to minimise risks to safety as far as is reasonably practicable. An employer must keep a record of every workplace accident (often called a register of injuries). This must be available at all times and must include the name of the injured person, the date and time of injury, brief description of what happened, where it happened and its cause, among other details

Anyone injured at work, including an employee, agency worker, contractor, customer or visitor, must be on the register of injuries. Personal data must be stored carefully in line with privacy law.

Employers must also review the incident to find out whether there are steps which can be taken to prevent it reoccurring. A serious injury, or risk to plant and equipment, will need a more in-depth investigation and may require the notification of the relevant health and safety regulator.

In some cases, employers have to use a particular form for workplace accidents. Workplace health and safety legislation requires employers to keep records of certain incidents, eg death, hospitalisation or serious injury. The requirement to keep records about workplace health and safety matters is subject to the health and safety legislation in whichever state or territory the business operates in.

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## **An accident record must include:**

- name of the injured person
  - date and time of injury
  - brief description of what happened
  - where it happened and its cause
-



# Creating a workplace safety policy

The workplace health and safety obligations for hospitality employers vary widely depending on the specifics of the business. There is no one size fits all policy for the hospitality industry but there are some elements of work health and safety which apply to every workplace.

## Where to start

- identify hazards in the workplace which may harm workers
- create and implement a written policy with clear guidelines about what is expected from all parties - this policy should be signed and dated by the employer, and be easily available to employees at all times. For example, display it around the workplace on noticeboards
- include staff in consultation about safety in the workplace to increase awareness of safety issues and improve the safety culture in the workplace
- manage hazards and control risks
- monitor and review

Complete a risk assessment which assesses any possible situation which may arise in the workplace. Things like employees using a ladder to access objects from a height, or electrical cords running down a hallway should be considered a risk and minimised as much as possible.

When looking to manage hazards, it is important to focus on likelihood of an injury and its severity to determine the best way to minimise its risk.

## Staff training

It is essential to train and supervise all staff in workplace health and safety. Training of employees can be as a collective, such as via mass emails or at toolbox talks on companywide updates which are relevant to all staff.

A more specific and focussed effort can be paid to individual jobs or tasks, with training aimed at employees directly involved in these tasks and not the whole company.

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**Ask** - Ultimately, are the practices working to eliminate risk?

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## Review

Regularly review the practices aimed at increasing safety and determine what is working well, as well as what is not working and needs to be addressed

## First aid

Every workplace is different, which means the first aid requirements will vary depending on the type of bar, café or restaurant, the size, the location and the number of employees. Workplaces must have arrangements in place, which are tailored to their specific circumstance.

Accidents can occur in all workplaces regardless of the industry, however being prepared and knowing how to minimise potential risk can help prevent an incident and/or reoccurring accidents. A workplace must provide, as far as is reasonably practicable, a safe working environment for all employees. This includes having first aid kits and suitably trained first aid officers.

# First aid kits

All employees must be able to easily access a first aid kit. The quantity of first aid kits depends on the size of the workplace and risk level. A high-risk workplace is one where employees are exposed to hazards which could result in serious injury or illness. For example, employees who frequently use hazardous machinery, work from heights, work in confined spaces or work in or around extreme temperatures. A low risk workplace is one where employees are not exposed to hazards which could result in serious injury or illnesses.

Whilst the content of first aid kits may vary across different workplaces, each first aid kit should always include the basic equipment for administering first aid to injuries. The exact contents should be based on the specific risk assessment conducted for your workplace. A first aider who has had the adequate training should be nominated to maintain the first aid kit.

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The first aid kit should be **easily identifiable**, and made from material which will **protect its contents** from dust, moisture and contamination.

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# Hygiene in the workplace

All workplace environments need to be hygienic and safe for employees and visitors, even those which are not involved in the production and handling of food and personal products. Implementing a workplace hygiene policy is an effective way to ensure all employees follow the same standards. Below are some key areas a workplace hygiene policy should address.

## Personal hygiene

Personal hygiene refers to the cleanliness, appearance and habits of employees, which can occasionally be a sensitive issue for managers and business owners. As employees often work directly with the public in the hospitality industry, personal grooming is especially important.

An official policy helps to ease any awkwardness by establishing precisely what is expected from employees. Criteria may include showering, using deodorant or perfume, grooming facial hair and hair-washing. If a uniform is required for the job, a policy can also outline the requirements for laundering and ironing.

Hand washing and the use of hand sanitisers also has great importance as a protection against the spread of illnesses.



# Legislative bodies

In addition to the policies and procedures outlined in this e-guide, it is important for employers to understand there are a number of state and federal legislative bodies that regulate the hospitality industry. Employers in the hospitality industry should also consider their obligations regarding:

- responsible Service of Alcohol certification
- responsible Conduct of Gambling certification
- food preparation and handling certification
- relevant licenses for serving food
- additional rules set by state regulators for serving food and alcohol
- strict legislation surrounding gambling on the premises
- Fair Trading requirements
- regulations surrounding opening hours

# Navigating workplace relations can be confusing.

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