

Module	EMPLOYMENT
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Application

Is the organisation a national system employer which employs employees on modern awards or enterprise agreements and on terms that are at least as favourable as the National Employment Standards?

Is the employer required to ensure that employees are not subject to unlawful discrimination or unfair treatment in the workplace, and that employees' rights in respect of health and safety, general protections and workers compensation are upheld?

Is the employer required to understand the rules around taking or responding to industrial action, and its obligations around lock outs and paying employees?

Module Scope

The *EMPLOYMENT* module informs the Australian employer of their legislated legal obligations under both commonwealth and individual state and territory jurisdictions. The module also demonstrates effective practical advice and assistance to the Australian employer to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of their organisation.

To fulfil its purpose the module focuses on providing practical assistance to the Australian employer establishing and maintaining a robust foundational framework that determines;

- How the organisation will function;
- Who is the responsible decision maker;
- What matters are relevant to the decision-making process; and
- Whether the desired outcome has been achieved.

The *EMPLOYMENT* module should be subscribed by all Australian employers, their employees and authorised individuals. The aim of the module is to equip the subscriber with knowledge of their obligations and the skills they require to establish relevant systems and processes to ensure compliance throughout their organisation.

Organisations are required to comply with a range of laws that govern the employer-employee relationship in Australia. The Fair Work Act 2009 (Cth) (FWA) applies to the vast majority of private sector organisations and governs the conduct of employers.

The FWA applies to 'national system' employees throughout Australia, these being employees working in;

- Corporations; and
- Unincorporated businesses in all states and territories except Western Australia.

The FWA has only limited application in relation to;

- Unincorporated businesses in Western Australia, which are largely regulated by state industrial relations legislation;
- WA has not referred governing power over such businesses to the Commonwealth.
- Public sector employment in New South Wales, Queensland, South Australia, Tasmania and Western Australia, which is largely governed by state industrial relations and public service legislation;
- Independent contractors, who are subject to the Independent Contractors Act 2006 (Cth).

The broad scope of the *EMPLOYMENT* module is to provide answers to these questions;

- What are our legal obligations?
- From where are our legal obligations derived?
- How can we ensure that we are complying with our legal obligations?
- What are the consequences if we are not complying with our legal obligations?

The *EMPLOYMENT* module covers all legislated legal obligations of Australian employers and demonstrates practical assistance and guidance to ensure that these obligations are complied with through the implementation and maintenance of best practice processes throughout the organisation. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply in particular circumstances.

The module fulfils this objective by comprehensively covering three areas;

- Legislation;
- Obligations; and
- Consequences.

The legislative and regulatory landscape from which the primary legal obligations are derived;

- Fair Work Act 2009 (Cth);
- Fair Work Regulations 2009 (Cth);
- Age Discrimination Act 2004 (Cth);
- Australian Human Rights Commission Act 1986 (Cth);
- Competition and Consumer Act 2010 (Cth);

- Disability Discrimination Act 1992 (Cth);
- Independent Contractors Act 2006 (Cth);
- Migration Act 1958 (Cth);
- Privacy Act 1988 (Cth);
- Racial Discrimination Act 1975 (Cth);
- Sex Discrimination Act 1984 (Cth); and
- National Code of Good Practice for Australian Apprenticeships (Cth).

In addition to the commonwealth legislation the module also refers to legislation in all states and territories which includes coverage of discrimination, education, training, industrial relations and the care of children.

The specific areas where legal and regulatory obligations apply to the Australian employer;

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| <ul style="list-style-type: none"> ➤ Different types of workers; ➤ Fulltime, part-time and casual; ➤ Labour hire; ➤ Independent contractors; ➤ Foreign; ➤ Children and young people; ➤ Apprentices and trainees; ➤ Fixed term and maximum term; and ➤ The application of and compliance with modern awards. ➤ Collective bargaining and enterprise agreements; ➤ Representation; ➤ Good faith; ➤ Terms and approval of agreements; ➤ Pre-approval information; ➤ Disputes; and ➤ Variation and termination. ➤ Recruitment; ➤ Advertising; ➤ Interviewing and selecting candidates; and ➤ “National system” employees. ➤ The employment contract; ➤ Formation; ➤ Terms; ➤ Obligations; and ➤ Sham contracting. ➤ Remuneration and working hours; ➤ Payment of wages; ➤ Minimum wages; ➤ Equal remuneration; ➤ Guarantee of annual earnings; and ➤ Maximum weekly hours. | <ul style="list-style-type: none"> ➤ Fair treatment in the workplace; ➤ Bullying; ➤ Discrimination; ➤ General protections; ➤ Coercion, undue influence and misrepresentation; ➤ Protection of whistleblowers; ➤ Performance management; ➤ Ill or injured employees; and ➤ Investigations. ➤ Leave and flexible work arrangements; ➤ Requests; ➤ Different forms of leave and entitlements; and ➤ Public holidays. ➤ Terminating employment; ➤ Grounds; ➤ Notice; ➤ Redundancy and redeployment; ➤ Notification and consultation obligations; and ➤ Post termination entitlements. ➤ Industrial action; ➤ Secret ballots; ➤ Employer action; ➤ Payment of workers; and ➤ Stopping or suspending employee action. ➤ Union right of entry; ➤ Discussions with employees; and ➤ Investigations. |
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- Workers compensation;
- Insurance;
- Payment of premiums;
- Health information;
- Claims;
- Benefits and entitlements;
- Liability and indemnity;
- Prohibited cost recovery;
- Dispute resolution and conciliation;
- False or misleading statements and information;
- Discriminatory conduct; and
- Records.
- Injury management;
- Display notices;
- Notice of injury;
- Returning workers; and
- Prohibited cost recovery.
- Record keeping;
- Form and general content;
- Employee agreements;
- Financial; and
- Leave and work hours.
- Transfer of business;
- Employment contracts;
- Industrial instruments;
- Employee entitlements; and
- Transfer of records.

Significant consequences can apply to Australian employers found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach or failure as well as the jurisdiction. The EMPLOYMENT module covers specific consequences in detail. They can include monetary penalties, the payment of compensation, and disciplinary measures.

The EMPLOYMENT module primarily focuses on general employment obligations as they apply in the different states and territories. The module does not cover obligations that are specific to public sector employment in Australia or different states and territories.

The EMPLOYMENT module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Australian employers. The module does not cover the process that an entity or an individual would follow to report or seek compensation for the breach or their loss.

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