

Employment Law Information Session

Please note: this presentation and associated materials are educational resources. They are not intended to constitute legal advice and should not be relied upon as such. These materials were last reviewed in April 2015.

Footscray CLC acknowledges the generous support of the Victorian Women's Trust and Helen Macpherson Smith Trust for the Employment Law Project. Line art courtesy of NSW AMES.

This information has been prepared by Footscray Community Legal Centre

This is a community
organisation.

It is not a government agency.

It can provide free, confidential
legal advice and referrals.



Address

Level 1
72 Buckley Street
Footscray

Phone

9689 8444

Interpreters are
available.



Legal information

In this presentation I will be giving you information about employment laws in Australia and what your rights are.

I AM NOT GIVING LEGAL ADVICE.

Australian employment law covers:

- Pay and work conditions
- Work contracts
- Sham contracting
- Workplace health and safety
- Discrimination
- Sexual harassment and bullying
- Dismissal



If you have a problem with your employment you need to seek help from a lawyer through a community legal service or other service.

What we will look at today

- Pay and work conditions
- Work contracts
- Sham contracting
- Workplace health and safety
- Discrimination
- Sexual harassment and bullying
- Dismissal

Are you employed?

Where do you work?

Do you work full-time or part-time?

Are you a permanent employee?

Are you a casual employee?

Do you work as a contractor?



Employment law at work



All employees are protected by employment laws the Fair Work System.

The Fair Work System sets National Employment Standards.

All employees also work under an employment contract.

Some employees also work under an Award or Enterprise Agreement.

All employees **MUST** follow workplace policies and procedures.

National Employment Standards

Employees may have the right to:

- maximum of 38 hours of work per week
- the right to request flexible working arrangements
- different types of leave e.g. parental leave, annual leave, personal leave, compassionate leave, community service leave, long service leave
- public holidays
- notice of termination and redundancy pay
- a Fair Work Information Statement

When people apply for a job
or when they start work they should



- **ask** if they are under an Award or an Enterprise Agreement;
- **keep a copy** of any documents they sign;
- **take notes** about any verbal agreements;
- keep a **work diary**



Types of workers

In Australia, different types of workers have different rights.

An **employee** may be:

- permanent part-time
- permanent full-time
- casual
- fixed-term/fixed-task
- an apprentice or trainee

Some workers are **independent contractors**.

Some workers are **volunteers**.



Should these workers be paid?



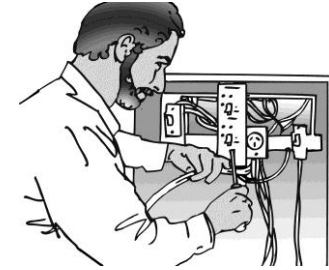
fixed term / task/
period



casual employee



volunteer



contractor



apprentice



employee on
probation



trial worker



trainee



permanent employee



work experience

The right to be paid



Not paid

- volunteer



May be paid

- work experience
- trial work



Paid

- permanent employee
- casual employee
- employee on probation
- contractor
- fixed term/task
- apprentice
- trainee

Rights at work – pay

Pay is set by:

- the contract of employment
- employment laws
- an Award or Enterprise Agreement

Employees **MUST** be given a payslip that explains your pay.

Ben Perez 10 Buckland Street Carlton 2042		Adina Printing Pty Ltd Pay date: 18/11/_ _ Pay period:05/11/_ _ to 18/11/_ _			
Employer: Adina Printing Pty Ltd		ABN: 78 098 454 789			
Name Ben Perez		Position Warehouse Assistant Level 1		Location Vic	Department WH
Superannuation Fund: ASF Employee Member: 1568		Paid By Bank transfer	Status Part-time	Pay Period 05/11/_ _ to 18/11/_ _	
Description	Qty	Unit	Rate	Amount	Type
Ordinary pay	30.00	hours	18.3769	\$ 551.31	Income
Income Tax	1.00	each	-	\$ 50.00	Tax
Superannuation (Storeman and Packers Fund)	1.00	each		\$ 49.62	Super
Income	Taxable = income		= Net pay		Employer Contributions
551.31	49.62		501.31		49.62
13 797.13	2 481.00		11 316.13		1 199.16
Pay method	BSB/Chq	Account No	Account name	% of Total	Amount
Bank transfer	074650	4888816773	Ben Perez	100%	\$501.31
Pay date: 18/11/_ _		Total bank Transfer Amounts		\$501.31	
		Total Cash Amounts		\$ 0.00	
		Total Cheque Amounts		\$ 0.00	

Allowances, overtime and penalty rates

These are set by an employee's contract, award or enterprise agreement.

- **Allowance** – extra money for the costs of doing a job e.g. an allowance for meals, a uniform, tools or travel
- **Overtime** – payment for working after regular shifts
- **Penalty rates** higher rates of pay for working night shift or on weekends

Rights at work – pay

- Employees should be paid **at least** the minimum wage.
 - Currently this is \$17.29 per hour for permanent employees and \$21.61 for casual employees.
 - Apprentice, trainees or employees younger than 21, may be paid a lower amount.

Video: Wages and other entitlements

Scenario: Andrea talks to a friend about her work in a café, where she isn't being paid properly for the work she does.

Watch the video and answer these questions:

- Name three things that Andrea's employer is doing that may be against the law?
- What can Andrea do if she wants to find out about her legal pay rate?
- How could Andrea try to get any money that her employer owes her?

Video: Wages and other entitlements

- The three things that Andrea's employer is doing that are against the law are:
 - Andrea is not being paid the Award rate;
 - Andrea is not being paid overtime, penalty rates, superannuation or holiday entitlements;
 - Andrea is not being provided with a pay slip.
- Andrea could talk to her boss (if she feels comfortable to do so), another colleague, or contact the Fair Work Ombudsman and request assistance. She could also contact the Footscray Community Legal Centre or another Community Legal Centre like JobWatch. If Andrea is a member of her union, she should contact her union.

What is an employee?

An employee usually:

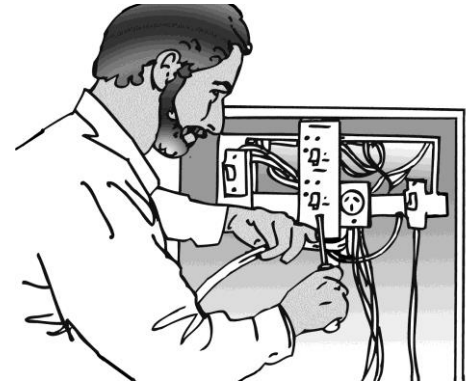
- works as part of their boss' company
- has ongoing work with an employer
- works under the control of their employer
- works set hours
- is paid regularly each week, fortnight or month
- has tax deducted from their pay
- has superannuation paid by their employer
- has tools and equipment supplied by their employer
- is entitled to leave e.g. annual leave, sick leave etc.
- is covered by their employer's insurance if they are injured at work



What is an independent contractor?

An independent contractor usually:

- runs their own business
- controls how they work
- decides what hours to work
- negotiates how much they will be paid for the work they do
- works for different bosses
- invoices for their work
- looks after their own tax and superannuation
- takes out their own insurance
- can delegate their work to others



Sham contracting

If an employer tells an employee they have to work as an independent contractor with an ABN, when really they are an employee, this is called **sham contracting**.

It is against the law.

Video: Employee or contractor?

Scenario: Tendai does painting work for Tim. Tim says he can't give Tendai future work unless he becomes a contractor with his own ABN

Watch the video and answer these questions:

- Do you think Tendai is an employee or a contractor?
- Why?
- If Tendai refuses to be made a contractor and Tim fires him, what can Tendai do?

Video: Employee or contractor?

- Tendai is more likely an employee. He is not the boss of his own company. He is working as part of Tim's company. For example:
 - He does not have control over the work he is doing.
 - Tim owns the business.
 - The business card shows that Tim is the owner
 - Tendai does not own the tools and equipment
 - Tim decides what hours Tendai will work using a roster
- If Tendai is fired because he will not accept being made a contractor, he can contact the Footscray Community Legal Centre, JobWatch or the Fair Work Ombudsman for assistance.

REMEMBER

- You can still be an employee even if you have an ABN.
- You may be taken on by an employer as as a contractor but it may still be a sham contract.

Unions

What is a union?

- Unions are organisations run by workers to help employees at work.
- Unions negotiate for better wages and conditions.
- Unions help members who have problems at work.



Do you have to join a union?

- Workers have the right to join a union.
- Workers have the right not to join a union.



Australian **Unions**
Join. For a better life.

Health and safety

An employer **MUST** provide a safe and healthy workplace for workers (including contractors).



Workers **MUST** work in a manner that is not harmful for themselves or other workers.

Workers **MUST** follow rules and directions given to them by your employer about safety.

If a worker doesn't know how to do a task safely, they should **ASK**.

Workplace injury - entitlements

If a worker gets injured at work, they may be entitled to:

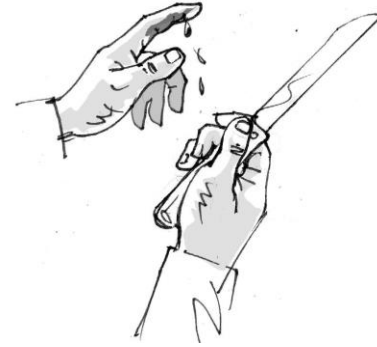
- payments if they cannot work or cannot work as much
- return to work with modified duties, if they can do some work
- compensation for expenses e.g. medical, hospital, ambulance, chemist, home help
- lump sum compensation if the injury is permanent
- return to their job when they get better



Workplace injury – if you are injured

If you get injured at work, you should:

- get medical help from your doctor
- ask for a Certificate of Capacity
- report your injury to your employer and union if you are a member
- complete a WorkCover claim form
- investigate whether you can make further claims, if your injury is serious



Video: Workplace injury

Scenario: Kev is injured at work and has time off. Kev returns to work and asks for modified duties. Bruce (the boss) tells Kev that he is fired.

Watch the video and answer these questions:

- What reason did Bruce give for firing Kev? Do you think this is legal?
- What does Kev give to Bruce as proof of his injury?
- If Kev made a Work Cover claim, what are some of the things he might be entitled to receive?
- Where can Kev go for advice about workplace injuries?

Video: Workplace injury

- In general, an employer cannot dismiss an employee or treat an employee unfairly because they have a temporary illness or injury, or because they make a WorkCover claim.
- If Kev makes a Work Cover claim, he may be entitled to
 - payments when he cannot work or cannot work as much
 - return to work with modified duties, if he can do some work (e.g. light duties but no heavy lifting)
 - compensation for expenses e.g. medical, hospital, ambulance, chemist, home help
 - lump sum compensation if his injury is permanent
 - right to return to his job when he gets better
- Kev can contact his union (if he is a member), Job Watch, Footscray Community Legal Centre, WorkSafe or a private solicitor for assistance.

Your rights at work – Protection

In the workplace you should be protected against:

- discrimination (direct and indirect)
- bullying
- sexual harassment
- victimisation



Discrimination

Discrimination is treating someone unfairly because of a personal characteristic. It can be **direct** or **indirect**.

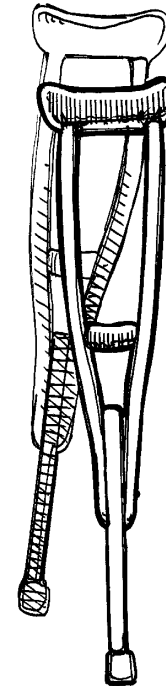
The law protects individuals against discrimination based on **protected attributes** in certain **areas of public life**.



Protected attributes

A person cannot be treated unfairly at work because of their **actual or assumed attributes** (or their friend or family member's) :

- age
- race or nationality
- sex or intersex status
- gender identity
- disability
- religious belief or activity
- political belief or activity
- sexual orientation or lawful sexual activity
- employment or industrial activity
- marital or relationship status
- pregnancy or breastfeeding
- parent or carer status
- physical features



POLLING BOOTH

A person cannot be refused a job or lose a job because of these things.

Areas of public life

Discrimination is prohibited in a range of areas of public life including:

- Employment, including recruitment
- Contract work
- Education
- Provision of goods and services
- Accommodation

Racial and religious vilification are prohibited in all areas of public life.

Direct and indirect discrimination

Direct discrimination is

- Unfavourable (unfair) treatment
- Because of a protected attribute
- In an area of public life

Example:

Carol is told she won't be undertaking the new customer services training because she is pregnant

- Unfair treatment – Denied training
- Protected attribute – Pregnancy
- Public life - Employment

Direct and indirect discrimination

Indirect discrimination is:

- a requirement, condition or practice
- that disadvantages a person with a protected attribute and,
- is unreasonable

Example:

Jack is told he needs VCE English to be a cleaner.

- Requirement: VCE English
- Protected attribute: Race
- Public life: Employment
- Unreasonable: Don't need VCE English to be a cleaner

Video: Discrimination

Scenario: Gary is the office manager. Ida works in Gary's department, and asks him about customer service training.

Watch the video and answer these questions:

- Where does Gary move Ida to?
- What reason does he give for moving Ida?
- What did Gary do that may be unlawful discrimination? Why?
- What was the **protected attribute**?
- What **area of public life** did the discrimination occur?
- Where could Ida get help?

Video: Discrimination

- Some actions taken by Gary which may be unlawful are:
 - Moved Ida to another team
 - Refused Ida's training request
 - Disrespectful language and name calling
- It is against the law to treat someone unfairly because of their religion.
- What protected attribute? *Religion*
- What area of public life? *Employment*
- Ida could get help from Victoria Legal Aid, the Victorian Equal Opportunity and Human Rights Commission, a CLC or her union.

Sexual harassment, bullying & victimisation

Sexual harassment is unwelcome conduct, of a sexual nature, and is likely to offend, humiliate or intimidate.

E.g. sexual comments or jokes, unwelcome touching, sending sexual emails or text messages.



Workplace bullying is persistent and repeated negative behaviour directed toward an employee that creates a risk to health and safety (mental or physical)

E.g. publicly humiliating someone, spreading bad rumours or gossip, verbal abuse.



Victimisation

Workers have the right to make complaints if they feel like they have been discriminated against, sexually harassed or bullied at work.

Victimisation is when a worker is treated badly because they:

- made a complaint about discrimination, sexual harassment or vilification
- helped someone else make a complaint

Victimisation is against the law.

You should **tell someone** if you think you are being bullied, sexually harassed, discriminated against or victimised.

Video: Sexual harassment and bullying

Scenario: Anna is bullied and sexually harassed by her manager.

Watch the video and answer these questions:

1. What are some examples of **bullying** in the video?
2. What are some examples of **sexual harassment** in the video?
3. Where does Ricki tell Anna to go to get help?

Video: Sexual harassment and bullying

Some examples of **bullying** in the video:

- Name calling, and making sure everyone in the office can hear.
- Excluded from team lunches
- Saying something is urgent, then saying it is not

Some examples of **sexual harassment** in the video:

- Touching Anna on the shoulders when he walked into the meeting room
- Telling Anna she looked good when he sat down
- Calling Anna sweetheart when he returns from lunch
- Sitting on Anna's desk
- Sitting too close to Anna
- Touching Anna's back, and her hair.

Ricki tells Anna to go to get help from another Manager, human resources (HR) or a community legal centre. She could also speak to Victoria Legal Aid.

Your rights when you lose your job



- **Notice of termination:** is warning that you are going to lose your job. Employees should get notice of termination (unless you are a casual employee). If no notice is provided, you should get payment in lieu.
- **Redundancy:** is when your boss no longer needs anyone to do your job. If you are made redundant you may be entitled to redundancy pay.
- **Other entitlements:** you should also get paid any unused annual leave you have accrued and long service leave if you have been with your work for 7 years or more.

What if your dismissal was unfair?

Unfair dismissal: Usually when you lose your job you should:

- be told why you are losing your job
- be given a chance to say why you shouldn't lose your job
- be given a fair reason for ending your job

If your employer does not do this, you may be able to make a claim that your **dismissal was unfair**.

General protections, discrimination and victimisation:

Remember, you cannot lose your job because you made a complaint or for a discriminatory reason.

Your rights when you lose your job

If you lose your job you should get advice because maybe you should be paid some money or get your job back

TIP: get advice quickly because there are time limits for making some claims (for example, 21 days for unfair dismissal)



Video: Unfair dismissal and other entitlements when your job ends

Scenario: Julia is a cleaner who works for Tony. Tony is annoyed at Julia and accuses her of stealing

Think about these questions as you watch the video:

- What reason did Tony give for firing Julia?
- Can an employee be dismissed for stealing?
- How long does Julia have to make an Unfair Dismissal or Adverse Action claim?
- Where does Jane recommend Julia go for legal help?

Video: Unfair dismissal and other entitlements when your job ends

What reason did Tony give for firing Julia?

Tony said he was firing Julia because she stole some chemicals.

Can an employee be dismissed for stealing?

An employee can be dismissed for stealing, but not without a proper investigation.

How long does Julia have to make an Unfair Dismissal or Adverse Action claim?

21 days.

Where does Jane recommend Julia go for legal help?

Jane recommends that Julia call Job Watch or another community legal centre for legal help.



Footscray

Community Legal Centre Inc

Level 1

72 Buckley Street

Footscray

**Do you have
a problem at
work?**

**3-5pm Wednesdays
No appointment is
necessary**

**Do you
have a refugee
background?**

**Are you a
newly arrived
migrant?**

**Lost your job?
Discrimination?
Injured?
Bullying?
Legal Pay Rates?**

Visit us or call on 96898444

We provide **FREE, CONFIDENTIAL** legal services to refugees, asylum seekers and newly arrived migrants who live in the Western suburbs of Melbourne.

**Footscray CLC
can help.**

**Please visit or
call for an
appointment.**

Other CLCs

Brimbank Melton Legal Service St Albans Office Level 1, 358 Main Road West St Albans Melton Office Melton Library 31-35 McKenzie Street Melton	Wyndham Legal Service Shop 10, 2-14 Station Place Werribee
	Moonee Valley Legal Service 13A Wingate Avenue Ascot Vale 3032

Where to go for help



For information about	Who can help?	Contact details
Discrimination Sexual harassment Victimisation	Victoria Legal Aid OR Victorian Equal Opportunity and Human Rights Commission OR Australian Human Rights Commission	1300 792 387 www.legalaid.vic.gov.au 1300 292 153 http://www.humanrightscommission.vic.gov.au 1300 656 419 https://www.humanrights.gov.au/
Wages or other entitlements e.g. awards	Fair Work Ombudsman	13 13 94 www.fairwork.gov.au
Rights at work If you lose your job Bullying	Job Watch	9662 1933 www.jobwatch.org.au
Unions	ACTU Help Desk	1300 486 466 www.actu.org.au
Injury or safety at work	Victorian WorkCover Authority (VWA) OR private firm e.g. Maurice Blackburn in Sunshine	1800 136 089 www.vwa.vic.gov.au 9310 2966

End of presentation

Spare stories if it is not possible to play
videos

Workplace stories

We will look at three workplace stories today.

We will think about what area of employment law is being ignored in each one.

This will give you some idea of how employment law relates to people in the workplace.

Story 1 - Zara



Zara wanted to be a chef. She asked Marco, the head chef at a local restaurant, if he had any work available.

Marco said that he did have a position available and agreed that Zara could come in for a *trial* period.

Zara worked from 11am to 10pm every day doing preparation work in the kitchen and cleaning dishes.

After three weeks, Zara still hadn't been paid. When Zara asked Marco about payment, he said there was no pay for trial work.

After Zara finished her *trial period*, Marco often paid her less than the agreed rate when the restaurant had a slow week.

What law is being ignored?

- Zara is not being paid her wages correctly.

OR

- Zara is not safe at work.

OR

- Zara is being bullied or discriminated against.

OR

- Zara is being denied other minimum working conditions.

Story 1 - Laws being ignored

- Employers **must** pay employees for all hours worked by them.
- Employers **must** pay employees the rate of pay they are entitled to under their contract, award or enterprise agreement. This must be **at least** the national minimum wage.
- Employees can only be required to work 38 hours per week plus reasonable additional hours. Employees may be entitled to overtime and penalty rates for additional hours worked.

What could Zara do?

Story 2 - Danny

Danny got a job as a cleaner. The job paid \$10 an hour. After a couple of days on the job his boss told Danny that he needed to get an ABN so he could be employed as an independent contractor.

Danny's friend Joseph who had been working there for longer refused to get an ABN and was sacked. Danny wants to keep his job, so he signed the independent contractor agreement.

Danny only had one boss who told him what to do and supervised his work. He worked regular hours at the same locations every week. His boss supplied all the equipment and Danny had to wear a company uniform.

One day Danny slipped because no sign had been set up to warn people about the slippery floor. He hurt his back and leg quite badly and could not come to work. Danny was not paid when he couldn't come to work because of his injury.

The following week he was told that there was no more work for him.

Danny continues to have expensive medical bills and cannot find work as he can only do light tasks due to his injury.

What law is being ignored?

- Danny was not being paid his wages correctly.

OR

- Danny was not safe at work.

OR

- Danny was being bullied or discriminated against.

OR

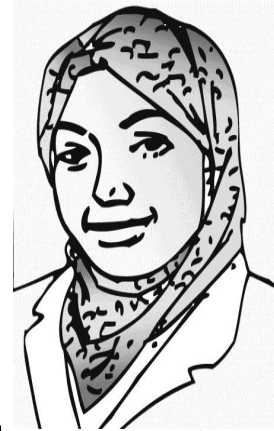
- Danny was denied other minimum working conditions.

Story 2 - Laws being ignored

- Employees are entitled to be paid at least minimum wage.
- It is unlawful for an employer to engage in sham contracting.
- Employees are entitled to paid personal leave of 10 days per year for illness and injury.
- In general, an employer cannot dismiss an employee or treat an employee unfairly because they have a temporary illness or injury.

What could Danny do?

Story 3 - Amineh



Amineh works in a shop.

Amineh is a hard worker and always meets her sales targets.

However, one of her managers makes fun of Amineh's hijab, and blames her for anything that goes wrong in the workplace, even when it is not her fault. Her manager says things like *"your accent and hijab are scaring customers away, people like you should not be working in our shop"*.

Other staff get promotions but Amineh has never been promoted, even though she has better sales results. Other staff are sent for training opportunities, but Amineh is never invited.

When Amineh made a complaint of discrimination, her manager told her there were no more shifts for her at the shop.

What law is being ignored?

- Amineh is not being paid her wages correctly.

OR

- Amineh is not safe at work.

OR

- Amineh is being bullied or discriminated against.

OR

- Amineh was unfairly dismissed.

Story 3 - Laws being ignored

- It is unlawful for an employer to treat an employee badly because of their race, nationality, sex or religion.
- It is unlawful for an employer to treat an employee badly because the employee made a complaint about discrimination.

What could Amineh do?