

Australia Employment Checklist



About the Employment Compliance Register

The **Employment Compliance Register** from LexisNexis® Regulatory Compliance informs the Australian employers of their legislated legal obligations under both commonwealth and individual state and territory jurisdictions. It provides effective practical advice and assistance to the employer, to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of their organisation. It should be subscribed to by all Australian employers, their employees and authorised individuals. The aim of the module is to equip you with knowledge of your obligations and the skills required to establish relevant systems and processes to ensure compliance throughout your organisation.

About the Expert

Dominic Fleeton

Partner, K&L Gates



Dominic Fleeton is a partner in the firm's Labor, Employment, and Workplace Safety practice. He helps clients manage safety-related crises. This work goes beyond the provision of strict legal advice and includes managing internal and external stakeholders, ensuring that all relevant regulatory and internal obligations are complied with while always remaining focused on minimising the client's legal risk exposure.

Dominic is an experienced employment, industrial relations and safety litigator and, in all cases, seeks to identify upfront the client's commercial and other goals and then looks for the simplest and most effective options to achieve those goals. Dominic knows how to balance the robust pursuit and defence of claims and the management of clients' reputational outcomes.

Dominic was recognised as "Lawyer of the Year" by Best Lawyers in Australia™ for Occupational Health and Safety Law, Melbourne in 2022 and is a member of the team which was recognised as "Law Firm of the Year" for Occupational Health and Safety Law in Australia by Best Lawyers™ 2024.

EMPLOYMENT CHECKLIST

This checklist has been designed to help you identify your requirements.

Overview

Requirement	Needs work	Don't know	Meets requirement
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Does the organisation understand and comply with its obligations under employment law?

Types of Worker

Requirement	Needs work	Don't know	Meets requirement
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Does the organisation have an understanding of the different types of work arrangements that may be entered into with workers, and has it ensured that workers are provided with the benefits attached to the type of arrangement entered into?

Does the organisation ensure that it has written employment agreements in place with all its employees, and that full-time employees are provided with all their corresponding entitlements?

Has the organisation ensured that it has written employment agreements in place with all its employees, and that part-time employees are provided with all their corresponding entitlements?

Does the organisation ensure that employees hired on a casual basis are genuine casual employees and receive the corresponding entitlements?

If the organisation wishes to engage a labour hire worker, does it have a clear, written agreement in place with the labour hire provider to ensure that the worker cannot be classified as an employee of the organisation?

Does the organisation ensure that workers engaged as independent contractors are genuine independent contractors, and that the work agreement does not contain any unfair terms?

Does the organisation take reasonable steps to ensure that it does not allow a person who is not eligible to work in Australia, or who is in breach of their visa conditions, to work in Australia, and that it does not refer such a person to a third party?

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Does the organisation ensure that it does not employ children and young people in roles or under conditions that are not permitted or suitable?

Does the organisation enter into a training contract with each apprentice and trainee, and provide appropriate training, supervision, and support to assist the worker to gain the relevant qualification?

Does the organisation have processes and procedures in place to ensure that there are written contracts in place for all fixed and maximum term workers, and that employment only ceases in accordance with the contract?

If an organisation is permitted to pay an employee as a pieceworker and wishes to do so, does it have processes and procedures to ensure that it has written employment agreements in place that clearly outline the rate of pay and how the workers' output is to be measured?

Does the organisation ensure that all work performed for it on a voluntary basis is truly voluntary, and does it take steps to reduce the risk of voluntary work arrangements being found to be relationships of employment?

Does the organisation ensure that those employed under a daily hire arrangement are given the appropriate entitlements?

Does the organisation have systems and processes in place to ensure a worker with disability is adequately supported in their role and the workplace is inclusive and free of discrimination?

Does the organisation have systems in place to ensure, so far as reasonably practicable, that remote workplaces are safe and that remote workers are adequately supervised and accurately compensated?

Modern Awards

Requirement	Needs work	Don't know	Meets requirement
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Has the organisation ensured that it understands which modern award (if any) applies to each of its employees, and that all terms of the award are complied with?

Is the organisation aware of which modern award (if any) applies to each of its employees? Does it provide each employee with the minimum entitlements under the applicable award?

Does the organisation have processes and procedures to ensure compliance with the terms of any modern award that applies to its employees?

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Collective Bargaining and Enterprise Agreements

Requirement	Needs work	Don't know	Meets requirement
If the organisation is negotiating an enterprise agreement, does it adhere to the collective bargaining requirements, including notifying employees of their right to representation, negotiating in good faith, ensuring the mandatory terms are included in the agreement, and following the proper voting and approval process?			
If an organisation wishes to appoint a bargaining representative, or revoke the appointment of a bargaining representative, does it have processes and procedures in place to ensure that the appointment or revocation is made in writing?			
Has the organisation taken all reasonable steps to notify employees who will be covered by a proposed enterprise agreement of the employees' right to representation in bargaining by issuing the Notice of Representational Rights?			
When negotiating a proposed enterprise agreement, does the organisation ensure that the bargaining representative meets the good faith bargaining requirements?			
Does the organisation have processes and procedures in place to ensure that enterprise agreements are drafted to contain the mandatory terms and do not contain any unlawful terms?			
If an organisation wishes to request employees to approve an enterprise agreement, has it provided a copy of the agreement, an explanation of the agreement and details of the voting process to employees within the required timeframes?			
Does the organisation and its bargaining representatives understand the formal dispute resolution mechanisms available if bargaining is not proceeding efficiently, and ensure that it complies with any orders made?			
Has the organisation or a bargaining representative applied to the Fair Work Commission for approval of a proposed enterprise agreement, and ensured that the application is submitted within 14 days of a majority of voting employees approving the agreement?			
If an organisation wishes to vary or terminate an enterprise agreement that is within its nominal term of operation, does it obtain valid majority consent from employees, or apply for an order from the Fair Work Commission?			

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Recruitment

Requirement	Needs work	Don't know	Meets requirement
Does the organisation ensure that staff do not engage in conduct that is misleading or discriminatory during the recruitment process, and that new employees are provided with a copy of the Fair Work Information Statement and other required information?			
Has the organisation ensured it is not engaging in conduct that is misleading, misrepresents workplace laws, or is unlawfully discriminatory when advertising for a new employee?			
Has the organisation ensured it is not engaging in conduct that is misleading, misrepresents workplace rights, or is unlawfully discriminatory when interviewing and selecting candidates?			
Has the organisation provided information to new 'national system' employees, including a Fair Work Information Statement, a copy of the written employment agreement, and any relevant company policies and procedures?			

The Employment Contract

Requirement	Needs work	Don't know	Meets requirement
Does the organisation ensure that employment contracts are in writing, are comprehensive and contain all the terms agreed to by the organisation and employee, and that the terms agreed meet the safety net of the National Employment Standards and any applicable award or enterprise agreement?			
Does the organisation ensure that all employment contracts are written, are comprehensive, and meet the legal requirements for a valid contract?			
Does the organisation ensure that employment contracts set out all the obligations intended to apply to the organisation and employee?			
Does the organisation comply with all its obligations towards its employees that are contained in employment contracts and applicable legislation, as well as any implied obligations?			
Does the organisation expressly include implied employee obligations in the employment contract where appropriate?			
Does the organisation ensure that employment contracts reflect the true nature of the relationship they govern?			

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Remuneration and Working Hours

Requirement	Needs work	Don't know	Meets requirement
Has the organisation ensured that employees are not unreasonably requested to work more than the maximum specified working hours, and that they are paid in accordance with their employment agreement and applicable workplace laws and instruments?			
Does the organisation have processes and procedures to ensure that it is paying wages in the required manner, and that employees are provided with payslips?			
Does the organisation pay its employees at or above the minimum rate specified in the relevant modern award, enterprise agreement or National Minimum Wage Order?			
Does the organisation ensure it is not discriminating against employees in relation to the setting of wages? Does the organisation report annually to the Workplace Gender Equality Agency on its gender equality practices?			
If an organisation wishes to enter into a guarantee of annual earnings with an employee, does it ensure the agreement is in writing and has been agreed to by the employee?			
If an organisation is requesting an employee to work hours exceeding specified maximums, does it ensure that the additional hours are reasonable?			
Does the organisation have systems in place to ensure that it meets its payroll tax obligations?			

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Fair Treatment in the Workplace

Requirement	Needs work	Don't know	Meets requirement
Does the organisation have processes and procedures that are intended to help ensure that employees and other workers do not suffer unfair treatment in the workplace?			
Does the organisation have processes and procedures to ensure that it has taken reasonable steps to prevent workplace bullying and to address any workplace bullying to address any workplace bullying that does occur?			
Does the organisation meet its obligations in relation to the elimination and prevention of sexual harassment in the workplace?			
Has the organisation taken steps to avoid any unlawful discrimination occurring in the workplace?			
Does the organisation and individuals at the organisation ensure they do not take adverse action against an employee, independent contractor, prospective employee, or prospective independent contractor because of the person's workplace rights or industrial activities?			
Has the organisation ensured that it does not engage in conduct with the intention of coercing or unduly influencing an employee in relation to certain workplace rights and activities, or make false or misleading representations about these rights and activities?			
Does the organisation ensure that employees who make protected disclosures of wrongdoing on the part of the organisation or its employees are not subjected to reprisals, threats, unfair dismissal, or other detriment?			
Does the entity or an associate of the entity ensure it does not victimise or reveal the identity of an individual who discloses tax-related information about the entity in an authorised way?			
Has the employer ensured that performance management plans are only initiated in genuine cases of underperformance by an employee, and that the program is implemented in a fair and consistent manner?			
Has the organisation ensured it does not dismiss an employee during a temporary absence associated with an illness or injury, and is it managing the employee in a manner that is reasonable in the circumstances?			
Does the organisation have a system in place to ensure that workplace investigations of alleged misconduct are conducted in an independent and procedurally fair manner?			
Does the organisation submit annual reports on gender quality indicators to the relevant Agency or Commissioner?			

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Enabling Access and Correction of Personal Data

Requirement	Needs work	Don't know	Meets requirement
Has the organisation provided employees with access to their minimum leave entitlements (subject to operational requirements), and has it processed and responded in writing to requests for flexible working arrangements received from employees within 21 days, ensuring that any refusal of a request is based on reasonable business grounds which are provided to the employee in writing?			
If an organisation receives a request for a flexible working arrangement under the Fair Work Act 2009 (Cth) from an employee, does it process the request and respond in writing within 21 days, only refuse the request on reasonable business grounds, and provide the employee with written details of the reasons for the refusal?			
Does the organisation provide its employees access to their minimum parental leave entitlements?			
Does the organisation have processes and procedures to ensure that it is providing its employees with their minimum annual leave entitlements? (Annual Leave)			
Does the organisation have processes and procedures to ensure that it is providing its employees with access to their minimum personal/carer's leave and compassionate leave entitlements? (Personal/Carer's Leave and Compassionate Leave)			
Does the organisation have processes and procedures to ensure that it is providing its employees with access to their minimum community service leave entitlements?			
Has the organisation ensured its employees are provided with their minimum long service leave entitlements according to the laws and/or industrial instruments that apply to the employees?			
Does the organisation provide its employees with their minimum public holiday leave entitlements?			
Does the organisation have processes and procedures to ensure that, where applicable, it is providing its employees with access to family and domestic violence leave entitlements?			
Does the organisation have procedures in place to ensure that employees who are summoned to perform jury duty or otherwise required to attend legal proceedings have access to applicable leave entitlements?			

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Terminating Employment

Requirement	Needs work	Don't know	Meets requirement
Does the organisation ensure that any terminations are lawful, and that any dismissal of employees covered by the unfair dismissal regime is for a valid reason and is otherwise not harsh, unfair or unreasonable in accordance with the requirements set out in the Fair Work Act 2009 (Cth)? Does the organisation adequately protect its physical and intellectual property and have in place adequate restraint of trade agreements?			
Does the organisation ensure that terminations of employment are made on valid grounds and in accordance with procedural fairness?			
Does the organisation provide the required period of notice or payment in lieu of notice before terminating an employee's employment?			
Does the organisation ensure that any redundancies it makes are genuine and comply with notification, consultation, and redundancy payment obligations?			
Does the organisation notify Centrelink and applicable employees' organisations when it decides to make at least 15 employees redundant?			
Does the organisation have systems and processes in place to ensure that employees receive the right entitlement when their employment is terminated?			
If the organisation includes restraint of trade provisions in employment contracts, does it ensure those provisions are carefully drafted, having regard to the employee's position and that they go no further than is reasonably necessary to protect the employer's legitimate interests?			
Does the organisation have in place procedures and systems to ensure that all physical and intellectual property of the organisation is retained by the organisation when an employee is terminated?			

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Industrial Action

Requirement	Needs work	Don't know	Meets requirement
Is the organisation complying with its obligations around the taking of industrial action by both the organisation and its employees, including: cooperating in the conduct of secret ballots; complying with rules around the payment of employees engaging in industrial action; ensuring the common requirements are met if the organisation wishes to lock workers out of the workplace; and following lawful channels for the stopping of industrial action?			
Has the organisation cooperated in the conduct of a secret ballot to determine whether employees wish to engage in protected industrial action in relation to negotiations or an enterprise agreement?			
If the organisation wishes to engage in industrial action that is protected from civil liability, does it ensure that the action meets the requirements of the Fair Work Act 2009 (Cth)?			
Does the organisation ensure it withholds the appropriate amount of pay for periods of industrial action, unless the payment is in relation to protected partial work bans or where employees refuse to perform voluntary overtime?			
Does the organisation have processes and procedures to ensure that any action it takes to stop or suspend employee industrial action is lawful?			

Registered Organisation Right of Entry

Requirement	Needs work	Don't know	Meets requirement
Does the organisation have a process in place to ensure that it does not refuse or delay entry to premises to a permit holder, or hinder or obstruct a permit holder in going about their permitted activities, and does not threaten, intimidate, or otherwise discourage employees from participating in discussions with permit holders?			
Does the organisation have a system in place to ensure that a right of entry permit holder who lawfully exercises a right to enter a workplace is not refused or unduly delayed entry to premises, or intentionally hindered or obstructed in going about their permitted activities in holding discussions with employees, and that employees are not threatened, intimidated, or otherwise discouraged from participating?			
Does the organisation have a system in place to ensure that a right of entry permit holder is not refused or unduly delayed entry to premises, or intentionally hindered or obstructed in going about their permitted activities in investigating a suspected breach of a workplace law?			
Does the organisation have a system in place to ensure that a right of entry permit holder is not refused or delayed entry to premises or hindered or obstructed in going about their permitted activities in investigating work health and safety issues?			

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Workers' compensation

Requirement	Needs work	Don't know	Meets requirement
Does the employer have policies and procedures in place to ensure that it holds an approved workers' compensation insurance policy on an ongoing basis, and that it follows the required procedures and standards of conduct in relation to workers' compensation claims?			
If the employer is required to hold a workers' compensation insurance policy, does it have procedures in place to ensure that it has either obtained a policy from an approved insurer or registered for a policy with the workers' compensation authority (depending on the jurisdiction)?			
Does the employer have procedures in place to ensure that it pays its workers' compensation insurance premium by the due date, and that it provides accurate information to the insurer to ensure that it is paying the correct premium?			
Does the employer have procedures in place to ensure that it provides relevant health information in its possession to a worker within the requisite time frame upon request, unless the information would pose a serious risk to the life or health of the person, in which case the request must be refused?			
Does the employer have procedures in place to ensure that workers' compensation claims are forwarded to the employer's insurer or to the relevant state or territory authority (as applicable) within the required time period?			
Does the employer have procedures in place to ensure that it forwards all workers' compensation benefits to the worker within the required time periods, where applicable?			
Does the employer have procedures in place to ensure that it does not make any payment or settlement or incur any expense or cost in relation to an injury or workers' compensation claim without the consent of the insurer?			
Does the employer have procedures in place to ensure that it does not attempt to recover certain costs from a worker in relation to a claim for workers' compensation?			
If the employer is a party to a dispute referred to conciliation, does it ensure that it understands all requirements imposed by the legislation relating to the conciliation process? This may include producing relevant documents, complying with all lawful directions given to it by an authorised conciliation officer (or equivalent), and avoiding making false or misleading statements in relation to the conciliation process.			
Does the employer have procedures in place to ensure that neither it nor its employees are involved in the provision of false or misleading statements or information under the workers' compensation legislation?			
Has the employer taken steps to ensure that the workplace is free from unlawful discrimination in relation to workplace injuries and workers' compensation matters?			
If the employer is or was required to hold a workers' compensation insurance policy, does it ensure that it keeps proper books relating to workers' compensation matters and preserves them for the required period?			

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Injury Management

Requirement	Needs work	Don't know	Meets requirement
Has the employer implemented an appropriate framework for injury management in the workplace?			
Does the employer have procedures in place to ensure that a notice outlining the injury notification process is displayed and readily accessible to workers in the workplace?			
Does the employer have processes in place that allow workers to give notice of injuries within the required time frames?			
Does the employer have processes in place to provide employment to returning injured workers?			
Has the employer established a suitable return-to-work program for injured workers, and has it appointed a coordinator to support injured workers and facilitate their return-to-work?			
Does the employer have processes in place to notify the relevant state or territory WorkCover Authority of injured workers sustaining an injury or returning to work?			
Does the employer have processes in place to ensure that it cooperates with return-to-work inspectors and other officers authorised by its state work injury management and safety authorities?			

Record-keeping

Requirement	Needs work	Don't know	Meets requirement
Does the organisation maintain the required types of employment records in an accessible form for seven years, and ensure that it collects, stores, uses, and disposes of particular records in accordance with privacy laws?			
Does the organisation have processes and procedures to ensure that it maintains the required types of employment records in an accessible form for seven years, and ensure that the records contain the required general employment information?			
Does the organisation have processes and procedures to ensure that it records in writing the required types of agreements entered into with employees and maintains copies of the agreements in an accessible form for seven years?			
Has the organisation maintained the required types of financial records in an accessible form for seven years?			
Has the organisation maintained the required types of records relating to employee leave and working hours, and retained the records in an accessible form for seven years?			

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Transfer of Business

Requirement	Needs work	Don't know	Meets requirement
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When a business is sold via a transfer of assets, has the vendor and purchaser made provision for the transfer of any employees who accept an offer of employment from the purchaser, and ensured that the vendor transfers employee records to the purchaser?

Has the organisation ensured that contracts for the sale of the business contain provisions necessary to facilitate the termination of the vendor's employment of any employees whom the purchaser intends to employ, and to manage the employees' entitlements?

If an organisation is purchasing a business, does it ensure it complies with any industrial instruments and individual arrangements that apply (or will apply) to existing, transferring, and future employees?

If the organisation is a vendor or purchaser in the sale of a business, is it aware of its responsibilities to provide entitlements owing to transferring and terminated employees?

Does the vendor have processes and procedures to ensure that the records of all transferring employees are transferred to the purchaser of a business?

Your Free Demonstration

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About LexisNexis Regulatory Compliance

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