



10 Point Hair and Beauty Industry HR Compliance Checklist

This snapshot can be used by businesses in the Hair and Beauty Industry across Australia to consider how they measure up against these 10 key requirements of workplace compliance.



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This snapshot can be used by businesses in the Hair and Beauty Industry across Australia to consider how they measure up against these 10 key requirements of workplace compliance.

#	Compliance Check	Yes	No
1	I have clearly identified the applicable Industrial Instrument or modern award that applies to my business and its employees - most likely to be the Hair and Beauty award.	<input type="checkbox"/>	<input type="checkbox"/>
2	I understand the requirements of the 11 National Employment Standards (NES) that apply to all employees.	<input type="checkbox"/>	<input type="checkbox"/>
3	I understand the rules in the Hair and Beauty Award around engaging part-time employees, and have agreed a regular pattern of work in writing with my part time staff including the exact number of hours they will work per week, their days of work and their starting, finishing and break times.	<input type="checkbox"/>	<input type="checkbox"/>
4	For any Trainees and Apprentices I employ, I have all the information about the relevant training agreement in place and the employment conditions that impact my obligations as an employer.	<input type="checkbox"/>	<input type="checkbox"/>
5	I have a system for inducting all new employees which ensures they are provided with all the required onboarding documents, and that they are given the appropriate information they need to commence their role.	<input type="checkbox"/>	<input type="checkbox"/>
6	I am confident that I am correctly applying the relevant Hair and Beauty award minimum rates of pay for all hours worked, including any additional amounts for overtime, weekend and public holiday work and all required allowances.	<input type="checkbox"/>	<input type="checkbox"/>
7	I keep a record of all employment records for at least 7 years' and issue pay slips every pay cycle.	<input type="checkbox"/>	<input type="checkbox"/>
8	I am confident that I fully understand requirements in relation to termination of employment and I have adequate procedures in place for managing poor performance and misconduct issues.	<input type="checkbox"/>	<input type="checkbox"/>
9	I am aware of my work, health and safety obligations and have a WHS system in place which is appropriate relative to the risks of the business.	<input type="checkbox"/>	<input type="checkbox"/>
10	I understand the risks regarding engagement of independent contractors, specifically the need to ensure they are genuine contractors and not in-fact employees of the business. I understand even genuine contractors can be entitled to superannuation contributions.	<input type="checkbox"/>	<input type="checkbox"/>

Answer - Question 1

1 Modern Awards

The majority of employees in Australia are covered by a “modern award”. Awards set minimum terms and conditions including minimum wages, overtime rates and breaks.

Awards usually apply to either a particular industry (such as the Hair and Beauty Industry Award) or a particular occupation (such as the Nurses Award which will generally cover a nurse employed in any industry). Modern awards can also have both industry and occupational coverage (such as the Health Professionals and Support Services Award, which applies to health professionals working in different industries and to the health industry itself).

It is a requirement to tell employees which award covers their employment and their classification under the award. Employers can be subject to significant financial penalties for breaching the terms of a modern award.

Typically, in the Hair and Beauty industry the most likely award that will apply to businesses operating in this area is the Hair and Beauty Industry Award 2020. This is defined as follows:

- *Performing shaving, cutting, hairdressing, hairstyling, haircutting, trimming, facial waxing, beard trimming, face or head massaging, shampooing, wig-making, hair dyeing, eye-brow waxing, lash tinting or any process or treatment of the hair, head or face carried on, using or engaged in a hairdressing salon and includes the sharpening or setting of razors in a hairdressing salon; and/or*
- *Performing manicures, pedicures, nail enhancement, nail artistry techniques, waxing, eyebrow arching, lash brow tinting, make-up, analysis of skin, development of treatment plans, facial treatments including massage, specialised treatments including lymphatic drainage, high-frequency body treatments including full body massage, other specialised treatments including the use of machinery and other cosmetic applications, body hair removal including (but not limited to) waxing chemical methods, electrolysis and laser hair removal, aromatherapy and the application of aromatic plant oils for beauty treatments, use of various types of electrical equipment for both body and facial treatments.*

You can refer to our Hair and Beauty Industry Award summary for more information on who may be covered by this award and what other possible awards may also commonly arise for businesses operating in this industry.

Answer - Question 2

2 National Employment Standards (NES)

The 11 standards cover the following areas:

Maximum weekly hours - these are generally 38 hours per week, and employees can only work more hours than this where the requirement is reasonable. What is reasonable will depend on the nature of the role (e.g. how senior they are) and the employee's personal circumstances (such as if they have any caring responsibilities).

Requests for flexible working arrangements – certain employees are entitled to request flexible working arrangements. This includes employees who have at least 12 months service and who:

- are the parent, or have responsibility for the care, of a child who is school aged or younger
- are a carer (under the Carer Recognition Act 2010)
- have a disability
- are 55 or older
- are experiencing family or domestic violence, or
- provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

Flexible working requests can include requests to alter the hours, pattern or location of work including requests to work from home or working part-time. Employers can only refuse these requests where it is reasonable to do so.

Offers and requests to convert from casual to permanent employment - casual employees have a right to convert from casual to permanent employment if they have been employed for 12 months and in the last 6 months they have worked a regular pattern of hours, subject to limited exceptions.

Parental leave and related entitlements - all employees are entitled to 12 months unpaid parental leave if they have been employed for at least 12 months. They can ask for a further 12 month extension and this can only be refused on reasonable grounds.

Annual leave - full-time and part-time employees are entitled to four weeks paid annual leave per year, for part-time employees this is pro rata based on their number of working hours.

Personal/carer's leave- personal leave is the entitlement for full-time employees to 10 paid days off per year if they are sick or if they need to care for a family member. The entitlement is pro-rata for part-time employees.

Compassionate leave and unpaid family and domestic violence leave - all employees receive compassionate leave and unpaid family and domestic violence leave. Compassionate leave is two days leave per permissible occasion, such as when a relative dies or is seriously ill (the leave is paid for permanent employees and unpaid for casual staff). Family and domestic violence leave is five days unpaid leave per 12 month period.

Community service leave - community services leave includes leave to attend voluntary emergency management activities or jury service. This entitlement is unpaid except for jury service.

Long service leave - is a form of paid leave for long serving employees (generally those with between 7 and 10 years service), the entitlement varies from State to State. Casual employees get this too!

Public holidays - all employees are entitled to be absent from work on public holidays, unless it is reasonable to require them to work. Higher rates of pay for working public holidays are required by the Hair and Beauty Award.

Notice of termination and redundancy pay - full-time and part-time employees are entitled to between one week to five weeks' notice of termination based on their age and length of service. They can only be dismissed without notice for serious misconduct. Some employees are entitled to redundancy pay if their employment is terminated because their job is no longer required, but small businesses generally don't have to pay this if they have less than 15 employees (this is subject to specific provisions under certain modern awards).

Fair Work Information Statement and Casual Employment Information Statement - these are documents that set out employees' basic entitlements that need to be provided to all new employees.

Answer - Question 3

3 Part time employees

Under the Hair and Beauty Award a part-time employee is defined as someone who is engaged to work between an average of 3-38 hours per week, has reasonably predictable hours of work and receives equivalent entitlements to a comparable full-time employee on a pro-rata basis. Under the Hair and Beauty Award it is a requirement that part-time employees and their employer must reach an agreement as to the number of hours which is guaranteed to be provided and paid to the employee over a roster period and when this will be performed (i.e. the days of the week, the hours worked each day, the starting and finishing time each day and the times of taking and the duration of meal breaks). The employer and employee can agree to vary the regular pattern of work in writing before the variation occurs, but an employer could not get employees to work different hours a week without getting their written agreement on each occasion. For this flexibility an employee should be engaged as a casual.

Answer - Question 4

4 Trainees and Apprentices

Traineeships and apprenticeships are formally recognised and registered agreements provided by a training organisation (such as a TAFE or trade school). These require employees to complete practical work experience and on the job training to achieve course requirements. Employers should refer to the relevant state and territory training authorities for clarification on understanding an employee's unique traineeship or apprenticeship agreement and any limitations this may place on employment terms and conditions.

Employees engaged as a Trainee and/or Apprentice will be subject to both their unique training agreement provided by the relevant institution or training authority, as well as the provisions of the Hair and Beauty Award. For example, the award requires employers to reimburse an apprentice for all fees paid by the apprentice themselves to a registered training organisation (RTO), as well as the costs for purchasing textbooks

You can find further information on engaging these employees [here](#).

Answer - Question 5

5 Induction Processes

A good induction process involves introducing employees to their new job, workplace, colleagues and your business as a whole. An induction program should give your new employee the required resources to perform their job effectively and safely. Creating a good first impression will also enable a positive start to your working relationship. Compliance-related induction activities include issuing mandatory documentation, collecting payroll-related data, obtaining sign-off on employment contracts and company policies, providing site-specific workplace safety induction and providing appropriate training related to the employee's role. Some of these tasks can be performed before the employee commences employment.

Although there is no legal obligation to have a written contract in place, it is strongly advisable to have the terms and conditions of the employee's employment detailed in a written contract. This will help avoid uncertainty and disputes down the line.

In particular a good contract will provide certainty around matters such as employment type (full-time, part-time or casual), remuneration (is it inclusive or exclusive of superannuation?) and notice periods to terminate employment. It is also advisable to have terms dealing with confidential information, intellectual property, conflicts of interest and post-employment "restraints" (such as provisions preventing an employee from competing with your business or stealing your clients).

Written policies are an important way to inform employees about how the business operates and what is expected from them at work. Unlike terms in an employment contract, a workplace policy can be amended or removed by an employer without agreement of the employee.

It is highly advisable for every business to have policies in place that deal with matters such as grievances, poor performance, leave, bullying & harassment, social media use and WHS.

More and more businesses also require policies to deal with remote working and working from home.

Not only do such policies set expectations on employees, they are also a first step in an employer establishing that they have adequately addressed their duties of care in the workplace. For example, it would be difficult for an employer to show that they should not be liable for bullying or harassment that occurs in a workplace if they have not (at the very least) implemented a policy stating that such conduct will not be tolerated.

In addition there are a number of policies which (depending on the employer's location, size and activities) it is a legal requirement to have in place including a workplace surveillance policy, a privacy policy and a whistleblower policy.

Please refer to our Hair and Beauty Onboarding Guide for further details on onboarding new employees in the workplace.

Answer - Question 6

6 Minimum Wages

An employee's rates and wages will firstly be guided by whether a modern award applies to their role, and the unique rates set out within the award. Within a relevant award, there will be different **classification levels** that will align to an employee's position they have been employed within. Under the Hair and Beauty Award, classifications are found under "Schedule A – Classification Structure and Definitions".

In the Hair and Beauty Award there are six classification levels, based on employees' duties and qualifications and job title.

Generally, employees are entitled to higher rates of pay when they work more than 38 hours per week or if they are required to work at unsociable times (such as evenings, public holidays and/or weekends).

Under the Hair and Beauty Award there are also allowances paid for things such as, the cost of meals when an employee works overtime, a tool allowance where employees are required to provide their own tools (e.g. scissors) and where they need to act as a manager of a salon.

For award-covered employees it is highly advisable to have an "offset" clause which indicates that any payment made to the employee can be "offset" against any entitlement arising under the award. This allows employers to play flat hourly rates or annual salaries which absorb all entitlements under the award (e.g. overtime rates, allowances, annual loading, etc) – so long as the rate of pay is set high enough!

Answer - Question 7

7 Time and Attendance Records

The Fair Work Act contains specific provisions regarding the requirement to keep employee records and to keep them for at least seven years (with significant penalties for non-compliance). These relate to matters such as the hours an employee worked, what they were paid, leave accruals and reasons for termination of an employment.

If a business is subject to an audit from the Fair Work Ombudsman they will often be required to show evidence of their record keeping. Without records relating to what an employee was paid, the hours they worked, etc it will be very difficult for an employer to demonstrate that an employee who is alleging they have not been paid for all the hours they have worked should not be believed.

Answer - Question 8

8 Termination of Employment Processes

Failure to adequately address poor performance or misconduct issues can seriously damage morale and workplace culture, and can lead to significant issues with productivity in the workplace.

In addition, if an employee's employment is terminated without a proper and procedurally fair process being followed, then they may well have a range of potential legal claims they can make, including in "unfair dismissal". This can result in employers being required to pay compensation to former employees or, in some cases, being ordered to reinstate the employee in their former role.

The most important thing when dealing with poor performance and misconduct is not to ignore the behaviour – acting swiftly is very important to adequately manage it. Luckily, there are fairly well-established processes that can be followed when dealing with poor performance or misconduct which can be used to bring employees up to the required level, or, failing that, to dismiss them with minimal risks of claims.

These generally require a series of formal warnings being given to employees and a formal meeting occurring before an employee is dismissed.

Answer - Question 9

9 Work, Health and Safety Obligations

A consistent and comprehensive approach needs to be implemented in the business to ensure the effectiveness of a safety system relative to the risks of the workplace. This should comprise of planning and document control, safety records and registers, effective consultation with staff on WHS issues, risk management, awareness programs and regular reviews.

A business without an adequate safety system is at risk of prosecution for breach of workplace safety laws. Senior managers are responsible for the overall direction of safety – including encouraging safety-focused attitudes and behaviours. Line managers may have a responsibility to execute duties consistent with the safety system – e.g. induction and training, consultation, incident response and injury management. Managers also have responsibilities as employees to protect their own safety and the safety of those around them. Employees must follow reasonable instructions and report incidents.

Answer - Question 10

10 Independent Contractors

The key risk when engaging an independent contractor is that they will be found, in reality, to be an employee. Businesses can be subject to significant fines for “sham contracting” (wrongly classifying an employee as a contractor). They can also be held liable to back pay entitlements related to employment including notice of termination, paid leave, etc.

Even if someone enters into a written contract whereby they agree to work as a contractor and even if they provide an invoice through an ABN, this will not be sufficient to establish a genuine contractor relationship if other factors point to an employment relationship. Key matters that suggest a genuine contractor relationship exists includes that the contractor is running their own business, has a great degree of control about how and when they perform work, can delegate the performance of work to others, provide their own equipment and are paid to achieve a result rather than by the hour.

Even genuine contractors will be entitled to superannuation contributions if they are being paid wholly or mainly for their own labour, ie if they are being paid mainly for their own skills and efforts (rather than for supplying equipment / materials) and they are being required to perform services personally (they aren't allowed to delegate the performance of tasks to others). This could arise where a hairdresser / beautician in a salon is engaged as an independent contractor and is required to provide services themselves and cannot subcontract their performance to others.



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