



Update - JUNE 2018

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Who is an employee?

The Act defines an “**employee**” as a “*person engaged in the construction industry*”. The Act defines the “**construction industry**” as “*any industry involved in any construction described in Division C or Division E of the Australian and New Zealand, Standard Industrial Classification 1993.*”

Whilst the Act and the Rules provide the technical and legal definitions to be used to determine who is, and who is not an employee, in very simple terms an “employee” is a person who is generally employed to work on a building or on a building site carrying out “construction work”. This work includes erection, installation, reconstruction, re-erection, renovation, alteration, demolition, maintenance and repairs. Under certain conditions persons working off-site or transporting goods or materials to sites may also be employees for the purpose of the Act and Rules.

It doesn’t matter if an employee is an **apprentice, tradesman or labourer**, employed on a **full time, part time or casual basis, paid wages or a salary**; if they come within the scope of the above definition they need to be included on your Employer Return.

The Rules refine the definition of an “**employee**” to be a person engaged: (i) under a contract of service; (ii) under a contract that is wholly or principally for the labour of the person; (iii) under a contract, whether or not a contract of employment, by any labour hire agency or group training scheme.

A person employed under a “**contract of service**” as described in item (i) above, is your typically directly employed person. As an employer you are required to record the number of days and the amount of “ordinary pay” these employees receive, on the Employer Return you submit to TasBuild.

The persons described in item (ii) of the definition, in industry terms can be described as a “**labour only sub-contractor**”. Typically these persons are **sole traders** and contract to an employer to provide their **labour** on an hourly rate basis. In most cases they do not provide materials or major tools or plant and equipment to undertake the work, or where they do the value of these inputs is less than the value of their labour component.

It should be noted that there are a number of common law tests that can be applied to determine whether a person is being employed “under a contract that is wholly or principally for the labour of the person”. Where a person is being employed on that basis the employer must include them on their Employer Return.

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Entitlement Statistics for: May 2018

- Total entitlements paid: **79**
- Total value of entitlements paid: **\$634,599.99**
- Average weekly rate paid for all entitlements: **\$1,128.41**
- Average weekly rates paid to specific trades:

Boilermaker Welder:	\$1,171.44
Bricklayer:	\$1,081.60
Carpenter:	\$1,170.01
Concreter:	\$1,022.20
Electrician:	\$1,210.56
Glazier:	\$1,045.00
Labourer:	\$1,072.21
Painter:	\$990.34
Plant Oper:	\$1,112.61
Plumber:	\$1,233.56
Refrig Mechanic:	\$1,171.03
Rigger/Scaffolder:	\$711.41
Road maker:	\$1,115.02
Sheet Metal Wkr:	\$1,361.16
Other:	\$946.15

The weekly rates are an average of the rates actually paid by TasBuild to employees taking an entitlement during the subject month. The weekly rates paid have been calculated in accordance with the requirements of the Act and the Rules of the Fund. In general terms the rates represent the ordinary weekly amount payable to the employee and do not include site specific or other various compensatory allowances.

The information contained in this Update is of a general nature and does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Construction Industry (Long Service) Act applies to you.

Who is an employee?

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Finally item (iii) provides that an employee of a labour hire company or group training scheme is also an employee when employed to carry out any work in the “Construction Industry”.

In the above circumstance the obligation to advise TasBuild as to the days worked and the period pay on the Employer Return, rests with the labour hire agency or the group training company.

Please contact the TasBuild Office if you require clarification on any of these matters.

Pre-populated Returns

The introduction of the optional **pre-completed** Employer **Returns** has been a success, as reported by over 90 employers who have taken up the option.

Employers participating in this process receive Employer Returns with all the required information filled in. The information is based on the system calculating the employee’s daily pay rate multiplied by the number of actual ordinary time days in the month. Employers do not need to do anything further. No data entry/writing in days worked by the employee, wage calculations or recording.

This system is optimised where Employers employ full-time workers, there is no need to worry unless an employee has had a day off without pay.

The only other time an Employer would need to do anything is where an employee has had a wage increase/decrease during the period of the Return, or cease employment. In all other instances they just need to submit/return the Return.

Participation in the Pre-Completed Employer Return option is voluntary, if you are interested in participating or require further information please email Kylie McDonald at:
kmcdonald@tasbuild.com.au

Australian Business Register (ABR)

The ABR is a register of all business registered in Australia, that includes full contact details together with details of the industry in which the business operates.

TasBuild has recently received approval to access these records. This means we can cross check the ABR records with our own, to identify non-complaint businesses.

We have already had a level of success, despite only recently being provided access to the ABR’s non-public data.

Non-complaint employers will be contacted by TasBuild to ensure there is a level playing field for those employers currently complying.

[Are you a paper based Employer? Are you aware that your Employer Returns can be submitted electronically via our website? www.tasbuild.com.au](http://www.tasbuild.com.au)

It is easy, time efficient and the Tax Invoice is sent to your email address upon lodgement. If you are interested, please contact the office via email address secretary@tasbuild.com.au quoting your Employer Number with the subject heading **Please update to Online** and we will organise.

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