



Update - March 2015

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Legislative amendments

Under the previous Labor Government, TasBuild sought a number of amendments to the *Long Service (Construction Industry) Act 1997* to better articulate the work covered by the Act, to make the legislation more transparent, easier to access, interpret and apply.

Workplace Standards undertook an extensive Industry consultation process and the legislation was tabled in Parliament. The amendments were approved by the Lower House and were read for the first time in the Upper House. Parliament was prorogued due to the calling of the March 2013 election and the legislation lapsed.

TasBuild have been working with the new Government to re-introduce the previous amendments. We were advised that it was likely that the amendments would be tabled in Parliament during the March sitting. I have recently been advised this will now not happen.

TasBuild will continue to assist the Minister to ensure the tabling of the draft amendments in a timely manner.

Chris Atkins CEO

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 Standard Industrial Classification.”

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.

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Entitlement Statistics for: February 2015

• Total entitlements paid:	76
• Total value of entitlements paid:	\$576,853.66
• Average weekly rate paid for all entitlements:	\$1,089.53
• Average weekly rates paid to specific trades:	
Boilermaker:	\$1,153.96
Carpenter:	\$1,067.81
Carpet Layer:	\$918.00
Concreter:	\$972.99
Electrician:	\$1,149.55
Fitter & Turner:	\$1,368.00
Labourer:	\$1,078.46
Painter:	\$905.55
Plant Oper:	\$1,204.56
Plasterer:	\$1,142.04
Plumber:	\$1,212.21
Refrig Mech:	\$1,145.65
Roadmaker:	\$845.88

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.

Who is an employee? continued

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 of “Employee” 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.

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.

Office relocation

TasBuild Limited as part of our Investment Strategy have sold our existing premises and will be shortly relocating to Suites S3 and S4, Level 3 at 6 Bayfield Street in Rosny.

Whilst it is still early we expect to have the moved finalised before the end of April 2015.

We will keep our current PO Box and telephone numbers, however these will be changed over a period of time.

Please be assured that during the relocation process we will work to ensure that disruption to services will be kept to a minimum.

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.