About the F86C application form

# Application to determine an exemption period

## About determination of an exemption period

The [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions) (Fair Work Act) provides for the Fair Work Commission (Commission), on application, to make a **regulated labour hire arrangement order** in relation to employees who are supplied, or will be supplied, (directly or indirectly) by their employer to perform work for a **regulated host** (other than a small business employer). Employees supplied by their employer to a regulated host are **regulated employees**.

When a regulated labour hire arrangement order is in force, regulated employees covered by the order must generally be paid no less than the **protected rate of pay** for work they perform for the regulated host.

However, the Fair Work Act provides exceptions from the requirement to pay the protected rate of pay, including where an **exemption period** applies to a short-term labour supply arrangement.

The default exemption period is 3 months. The Commission can, on application, make a determination to the effect that:

* there is no exemption period (section 306J)
* there is a specified exemption period of less than or more than 3 months (section 306J), or
* there is a **recurring extended exemption period** (section 306K).

For more information about regulated labour hire arrangement orders, see [Labour hire employees' protected rates of pay](https://www.fwc.gov.au/agreements-awards/labour-hire-employees-protected-rates-pay).

## When to use this form

Use this form to apply for a determination altering the default 3 month exemption period, or a determination specifying a recurring extended exemption period if:

* an application for a regulated labour hire arrangement order has been made to the Commission, but not yet fully determined, or
* the Commission has made a regulated labour hire arrangement order (which is in force or is not yet in force).

This form can be used by:

* the regulated host
* an employer covered by the regulated labour hire arrangement order
* a regulated employee covered by the regulated labour hire arrangement order who is performing or is to perform work for the regulated host, or
* an employee organisation or employer organisation that is entitled to represent the industrial interests of any of the above.

## Lodging and serving your completed form

**1. Lodge** this application and any supporting documents with the Commission.

You can lodge this application by email, by post or in person at the [Commission office](https://www.fwc.gov.au/about-us/contact-us) in your state or territory.

**2.** **Serve a copy of this application and** **any supporting documents** as soon as practicable on all of the following (other than the person making this application):

* the regulated host
* each employer of regulated employees that is covered by the regulated labour hire arrangement order or proposed regulated labour hire arrangement order
* each employee organisation of which the person making this application is aware, that is entitled to represent the industrial interests of a regulated employee or employee of the regulated host.

You can serve documents several ways, including by email, express post or registered post.

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

* processes in the Commission
* how to make an application to the Commission
* how to fill out forms
* where to find useful documents such as legislation and decisions
* other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](https://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | This icon appears throughout the form. It indicates information to help you complete the form. |

### Legal or other representation

Representation is where another person (such as a lawyer, paid agent, union or employer organisation) speaks or acts on a person’s behalf or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a [Form F53](https://www.fwc.gov.au/apply-or-lodge/legal-help-and-representation/representatives-and-rules-they-must-follow/notify-us) – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

* an employee or officer of the person, or
* an employee or officer of an employee or employer organisation.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](https://www.legislation.gov.au/F2024L00379/latest/versions), and the Commission’s [practice note on representation by lawyers and paid agents](https://www.fwc.gov.au/hearings-decisions/practice-notes/practice-note-lawyers-paid-agents).

## Glossary of common terms

**Covered employment instrument** – see section 12 of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Employer -** the employer of the regulated employees to be covered by the proposed regulated labour hire arrangement order

**Exemption period** – see section 306G of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Host employment instrument** – see section 306E(6)of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Lawyer** – a person who is admitted to the legal profession by a Supreme Court of a State or Territory

**Paid agent** – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter

**Party** – a person involved in a matter or case that is brought to the Commission

**Protected rate of pay** – see section 306F of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Recurring extended exemption period** – see section 306K(2) of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Regulated employee** - see section 306E(5)of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Regulated host** – see section 306C of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Regulated labour hire arrangement order** – see section 306E(1) of the [Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions)

**Service** – serving a document means giving a copy of the document to a person, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1 and Schedule 1 of the [Fair Work Commission Rules 2024](https://www.legislation.gov.au/F2024L00379/latest/versions) deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](http://www.fwc.gov.au/documents/forms/form-f86c-privacy.pdf) for this form, or ask for a hard copy to be provided to you.

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**Remove this cover sheet** and keep it for future reference – it contains useful information

# Form F86C – Application to determine an exemption period

[Fair Work Act 2009](https://www.legislation.gov.au/C2009A00028/latest/versions) (the Fair Work Act), section 306L

This is an application to the Fair Work Commission to determine an exemption period in relation to a regulated labour hire arrangement order or proposed order in accordance with Part 2-7A of the [Fair Work Act](https://www.legislation.gov.au/C2009A00028/latest/versions).

## The Applicant

****These are the details of the person making this application.

**The Applicant is (choose one of the following):**

[ ]  The regulated host

[ ]  An employer covered by the regulated labour hire arrangement order

[ ]  A regulated employee covered by the regulated labour hire arrangement order

[ ]  An employee organisation or employer organisation that is entitled to represent the industrial interests of one or more of the above

### If the Applicant is an individual, provide the following information:

|  |  |
| --- | --- |
| First name(s) |  |
| Surname |  |
| Email address |  |
| Phone number |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |

### If the Applicant is not an individual, provide the following information:

|  |  |
| --- | --- |
| Legal name of Applicant |  |
| Applicant’s ACN (if a company) |  |
| Applicant’s trading name or registered business name (if applicable) |  |
| Applicant’s ABN (if applicable) |  |
| Contact person |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

### Do you need an interpreter?

If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help in your language](https://www.fwc.gov.au/about-us/contact-us/help-your-language) on our website.

|  |
| --- |
|  |

[ ]  Yes – Specify language:

[ ]  No

### Do you require any special assistance at the hearing or conference (eg a hearing loop)?

|  |
| --- |
|  |

[ ]  Yes – Specify the assistance required:

[ ]  No

### Does the Applicant have a representative?

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated with low confidence** | A representative is a person or organisation that is representing the Applicant. The Applicant is not required to have a representative. You can read more about [whether or not to have a representative](https://www.fwc.gov.au/apply-or-lodge/legal-help-and-representation) on our website. |

[ ]  Yes – Provide the representative’s details below

[ ]  No

### Representative’s details

****These are the details of the person or organisation that is representing the Applicant (if any).

|  |  |
| --- | --- |
| Name of person  |  |
| Firm, company or organisation |  |
| Email address |  |
| Phone number |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| **Is the representative a lawyer or paid agent?** **A blue and black circle with a letter in it  Description automatically generated with low confidence**The Applicant will need permission to be represented by a lawyer or paid agent in a conference or hearing that is conducted by a Commission Member. Our [lawyers and paid agents practice note](https://www.fwc.gov.au/hearings-decisions/practice-notes/practice-note-lawyers-paid-agents) explains when you need to ask for permission to be represented. |
| [ ]  Yes – please select: | [ ]  Lawyer[ ]  Paid agent |
| [ ]  No  |  |

## 1. Details of the regulated labour hire arrangement order or application

### 1.1 What is the status of the regulated labour hire arrangement order or the application for an order? Choose one of the following:

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | See sections 306J(1) and 306K(1) of the Fair Work Act. |

[ ]  A regulated labour hire arrangement order has been made (and is in force or is not yet in force) – provide details of the order below:

|  |  |
| --- | --- |
| Name of order |  |
| ID/Code number |  |
| Date order was made |  |
| Date order came or comes into force |  |

[ ]  An application for a regulated labour hire arrangement order has been made but has not been finally determined by the Commission – provide details of the application below:

|  |  |
| --- | --- |
| Commission case number (if known) |  |
| Name of applicant for the regulated labour hire arrangement order |  |
| Name of regulated host to be covered by the proposed order |  |
| Name of employer or employers to be covered by the proposed order  |  |

## 2. Other details

### 2.1 Provide the details of the regulated host covered by the regulated labour hire arrangement order or proposed order (the Regulated Host).

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | If the Regulated Host’s details have been provided above because it is the Applicant, you can just insert ‘The Applicant’ in the first space below instead of providing the Regulated Host’s details again. |
| Legal name of Regulated Host |  |
| Regulated Host’s ACN (if a company) |  |
| Regulated Host’s trading name or registered business name (if applicable) |  |
| Regulated Host’s ABN (if applicable) |  |
| Contact person |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

### 2.2 Provide the details of each employer of regulated employees covered by the regulated labour hire arrangement order or proposed order.

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | If an employer’s details have been provided above because it is the Applicant, you can just insert ‘The Applicant’ in the first space below instead of providing the details again. |
| Legal name of employer |  |
| Employer’s ACN (if a company) |  |
| Employer’s trading name or registered business name (if applicable) |  |
| Employer’s ABN (if applicable) |  |
| Contact person |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

### Add additional pages if there is more than one employer of regulated employees

### 2.3 Provide the details of each employee organisation of which the Applicant is aware, that is entitled to represent the industrial interests of a regulated employee covered by the regulated labour hire arrangement order who is performing or is to perform work for the regulated host.

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | If an employee organisation’s details have been provided above because it is the Applicant, you can just insert ‘The Applicant’ in the first space below instead of providing that organisation’s details again. |
| Legal name of employee organisation |  |
| Contact person |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

Add additional pages if there is more than one employee organisation

## 3. Details of exemption period sought

### 3.1 What type of exemption period is the Applicant seeking? Choose one of the following:

[ ]  No exemption period – specify:

* the employer of regulated employees to which this would apply, and
* the regulated employees of that employer to whom this would apply (you can describe the regulated employees as a class or group, you do not need to name each regulated employee).

|  |  |
| --- | --- |
| Employer |  |
| Regulated employees |  |

[ ]  An exemption period of less than 3 months or more than 3 months – specify:

* the employer of regulated employees to which this would apply
* the regulated employees of that employer to whom this would apply (you can describe the regulated employees as a class or group, you do not need to name each regulated employee), and
* the proposed exemption period.

|  |  |
| --- | --- |
| Employer |  |
| Regulated employees |  |
| Proposed exemption period |  |

[ ]  A recurring extended exemption period – specify:

* the proposed exemption period
* the day of the year the proposed recurring extended exemption period will start
* the consecutive years in which the proposed recurring extended exemption period will apply, and
* the kind of work the proposed recurring extended exemption period will apply to.

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | See section 306K(2) of the Fair Work Act for the definition of *recurring extended exemption period.*  |

|  |  |
| --- | --- |
| Proposed exemption period |  |
| Day of the year the exemption period starts |  |
| Consecutive years in which the exemption period applies |  |
| Kind of work the exemption period applies to |  |

## 4. The exceptional circumstances

### 4.1 Explain the exceptional circumstances that justify the Commission making the determination sought by the Applicant, having regard to the matters set out in section 306L(4) of the Fair Work Act and any other matters the Applicant thinks the Commission should consider.

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | Section 306L(4) of the Fair Work Act provides that the Commission may make a determination only if satisfied that there are exceptional circumstances that justify making it. |
|  |

## Authority to sign and signature

|  |  |
| --- | --- |
| **A blue and black circle with a letter in it  Description automatically generated** | For ‘Authority to sign’:* If you are the Applicant–insert ‘Applicant’
* If you are an employee of a company or organisation that is the Applicant–insert your position title
* If you are the Applicant’s representative and have provided your details in this form–insert ‘Representative’.
 |
| Authority to sign |  |   |
| **A blue and black circle with a letter in it  Description automatically generated** | Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field. |
| Signature |  |
| Name |  |
| Date |   |

|  |
| --- |
| **PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS** |