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Australia

Employee Invention Laws

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Australia – Employee Invention Laws

Does your country have specific laws governing employee inventions?

No, employee inventions are governed by common law principles rather than specific statutory provisions.

Primary Legislation/Law:

- Patents Act 1990 (Cth) – does not include express provisions on employee invention ownership.

Governing Framework:

- Common law principles determine ownership rights.
- Employment agreement clauses typically assign invention ownership to employers.

Application:

Courts consider the following factors in ownership disputes:

- Whether invention was developed during course of employment (e.g. during business hours using employer's equipment).
- Whether employee had a duty to invent.

What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

In the absence of specific employee invention laws in Australia, the ownership of employee inventions is determined by the principles referred to above. Under the Patents Act a patent may be granted to an employer where they derive title to the invention from an employee (e.g. an assignment clause in an employment agreement) or are entitled to have the patent assigned to them.

Trade secrets and confidential information are typically protected under confidentiality obligations in employment agreements. Employees also have an equitable duty to keep confidential information that is disclosed to them confidential.

Section 183 of the Corporations Act 2001 (Cth) also provides that a person who obtains information because they are an employee of a corporation must not improperly use that information to gain an advantage for themselves or someone else, or to cause detriment to their employer.

Which categories of employees are covered by your national employee invention laws?

Employee Definition: Australian courts determine employee status by examining the substance of the relationship between the employee and employer.

Assessment:

Courts consider multiple factors, including:

- Express terms of the employment contract

- Circumstances surrounding the employment
- Distinction from independent contractor relationships

What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

Temporal Scope:

- No express temporal restrictions under Australian law
- Employer owns inventions created during course of employment
- Inventions developed outside ordinary duties using employee's own resources unlikely to belong to employer

Territorial Scope:

- No express territorial restrictions under Australian law

Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Invention Categories: Australian law does not distinguish between different types of employee inventions.

Application:

- All employee inventions are treated equally
- Ownership determined using the same common law principles regardless of invention type

What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

Acquisition Process:

Primary Method:

- Assignment provisions in employment contracts

Alternative Methods (for dispute resolution):

- Declaration from the Commissioner of Patents
- Declaration from the Federal Court of Australia

Application:

- Rights transfer occurs through contractual assignment rather than automatic statutory transfer.

How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

Dispute Resolution: Australia does not have a specialised dispute resolution mechanism for employee invention disputes.

Patent Application Disputes:

Available remedies include:

- Declaration from Commissioner of Patents that application proceed in employer's name
- Opposition to grant of patent application
- Federal Court order to rectify Register of Patents to record employer as owner

Non-Patent Disputes:

Jurisdiction lies with:

- Federal Court of Australia
- Supreme Court of the relevant state

Scope:

- Misuse of confidential information
- Construction of intellectual property clauses in employment agreements

Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

There are no regulations requiring implementation of a policy on employee inventions. However, many businesses choose to adopt policies to safeguard confidential information and to ensure that details of employee inventions are disclosed by employees to the business.

Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

No, there is no obligation for employers to pay compensation to employees when claiming ownership of an employee invention, irrespective of the significance of the invention to the employer. Compensation for employee inventions is determined by the terms of the employee's employment agreement.

What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

Not applicable – see response regarding mandatory compensation.

Do your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

Not applicable – see response regarding mandatory compensation.

What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

Not applicable – see response regarding mandatory compensation.



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