

What are my employment rights?

Am I being treated fairly at work?

Where do I go for help?

# SUPERANNUATION

## DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

## What is Superannuation?

Superannuation (or “super”) is an amount of money paid by your employer into a fund to provide for your retirement. Employers must pay a proportion of your wage into one of these funds. This is known as the Superannuation Guarantee. Super is paid on top of your wage; unlike tax, it is not deducted from your wage, however be aware that sometimes salaries are advertised as inclusive of super which means the base wage is lower.

Some employees may make additional voluntary super contributions themselves. Such contributions do not count towards your employer’s obligation towards you.

## Who should receive super?

Most employees are entitled to superannuation contributions from their employer, including permanent or casual full-time and part-time workers.

An employee, for the purposes of the Superannuation Guarantee, is a person who receives payment of wages in return for the work that they do.

Some contractors who are paid mainly for their labour may also be employees for superannuation purposes. Even if you quote an Australian Business Number (ABN), you may be considered to be an employee for superannuation purposes. If you are unsure about your entitlements you should contact the Australian Taxation Office (ATO) for clarification. See ‘Where to get help’ on page 4.

Some employees are not entitled to superannuation. This group includes those who:

- are paid less than \$450 (before tax) by their employer within any calendar month
- are under 18 years of age and work 30 hours or less per week
- do domestic work for 30 hours or less per week.

If you are employed as a part-time or as a casual worker and your total monthly wage with a particular employer changes from one month to the next - above and below the \$450 (before tax) level - then you must have superannuation payments made on your behalf by your employer for those months that you earned more than \$450.

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**Employment Rights Information for Workers** – Job Watch Inc is an independent, not for profit, employment rights legal centre. It provides a free, confidential telephone information and referral service and other assistance to workers.

Hours: Mon-Fri 9am-5pm (Wednesday until 8:30pm).

Job Watch Inc | Metro (03) 9662 1933 | Regional Victoria, Queensland and Tasmania 1800 331 617 | [www.jobwatch.org.au](http://www.jobwatch.org.au)

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## How much money must my employer contribute?

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The minimum amount of money that must be paid by your employer into a superannuation fund is currently 9.5% of your earnings base.

Your earnings base usually includes your wage total (before tax) for your normal hours of work as well as any annual leave payments for leave actually taken. Some other payments such as pay instead of notice of termination, allowances, commission earned and performance based bonuses (unless the bonus is exclusively for working overtime) should also count as part of your earnings base.

Your earnings base may be stated in a modern award, enterprise agreement or employment contract. If it is not, then your earnings base will be based on your ordinary time earnings (OTE) which is the amount you earn for your ordinary hours of work

Payments that do not normally form part of your OTE include:

- overtime payments;
- weekly WorkCover payments where no work is performed; and
- cash payments for annual leave that you have not taken.

Employers are required to make contributions to your fund for each quarter by specified dates.

Be aware that 9.5% is the minimum employer contribution rate. Some employees may receive a higher employer contribution rate if it is stated in their employment contract or an applicable enterprise agreement etc.

To check your employment arrangements you may call the Fair Work Infoline on 13 13 94

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## Does my employer have to report to me?

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From 1 January 2005, your employer is no longer required to provide you with quarterly superannuation reports.

The amount of money paid by your employer should, however, appear on your yearly superannuation fund's Members Statement.

In addition, employers are also required to outline superannuation contributions on payslips.

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## When can I access my super?

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Most super benefits will be “**preserved benefits**”. Access to preserved benefits depends on your preservation age and your retirement from the workforce. Your preservation age will probably be between 55 and 60 years. Ring the ATO Superannuation Infoline for the age that specifically applies to you.

In certain circumstances you may be allowed a release of some or all of your super money on:

- compassionate;
- permanent disability/incapacity; or
- financial hardship grounds.

Ring your particular superannuation fund for more information about how you might be able to access this money on these grounds.

## What should I do if I think my employer has not acted correctly?

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If you are eligible to have super paid on your behalf but you believe that your employer is not making correct contributions (or if you have not been given a Member Application Form to complete), there are several actions you can take:

- Check that the super contribution due date has passed.
- Check your payslips.
- Discuss the issue with your employer. It may also be helpful for you to write to your employer and ask them to make the appropriate payments.
- Contact your super fund and request an updated printout of your member statement. Note also that fund managers must make reasonable efforts to ensure employers make contributions into their funds.
- If action is still not taken, telephone the ATO on its **Superannuation Infoline (phone 13 10 20)** and request an “Employee Notification of Insufficient Employer Contributions Form”. After completing the form you should return it to the ATO, along with a request that they keep you informed of how the recovery process is proceeding. The ATO may also take details of the complaint over the telephone. See also [www.ato.gov.au](http://www.ato.gov.au)

If your employer has not made the required level of contributions, they may have to pay a “charge” and interest on top of the super that you are owed.

If the ATO is successful in getting your employer to pay, it will send you a Superannuation Guarantee voucher which should be deposited with your super fund.

**Contact Fair Work Infoline – 13 13 94 to find out whether your employment is covered by a federal award or agreement. If you are a union member, you should contact your union.**

Superannuation payments, even though paid on your behalf, are not owed to you. If your employer has failed to make contributions, they are moneys owed to the ATO. This means that unless your enterprise agreement, applicable modern award or employment contract specifically requires your employer to pay super, you have no right to personally take legal action against your employer to recover unpaid superannuation.

If your employment is terminated or you are treated less favourably because you complained to your employer or the ATO about your superannuation, you may be able to make an Unfair Dismissal Claim, a General Protections Dispute Claim or a Discrimination Claim. If this happens to you, you should contact JobWatch quickly as strict time limits apply. For example, you only have **21 days** from the date of your dismissal to make an Unfair Dismissal Claim or a General Protections Dispute Termination Claim (see JobWatch’s ‘Unfair Dismissal’ and ‘General Protections Dispute Termination Claim’ infosheets).

## Where to get help

For further information regarding superannuation you may wish to contact the relevant organisations below:

ORGANISATION	PHONE	WEBSITE
<b>JobWatch</b> <i>(Telephone interpreters available for non-English speakers.)</i>	Metro: 9662 1933 Queensland, Tasmania & Regional Victoria: 1800 331 617	<a href="http://www.jobwatch.org.au">www.jobwatch.org.au</a>
<b>Australian Tax Office</b>	13 10 20	<a href="http://www.ato.gov.au">www.ato.gov.au</a>
<b>Fair Work Commission Helpline</b>	1300 799 675	<a href="http://www.fwc.gov.au">www.fwc.gov.au</a>
<b>Fair Work Infoline (Office of the Fair Work Ombudsman)</b>	13 13 94	<a href="http://www.fairwork.gov.au">www.fairwork.gov.au</a>
<b>ACTU Worker Information line (for referral to a union):</b>	1300 362 223	<a href="http://www.actu.org.au">www.actu.org.au</a>
<b>Legal Referral Service (Law Institute of Victoria)</b>	9607 9311	<a href="http://www.liv.asn.au">www.liv.asn.au</a>
<b>Queensland Law Society (for referral to a lawyer)</b>	1300 367 757	<a href="http://www.qls.com.au/Home">www.qls.com.au/Home</a>
<b>Law Society of Tasmania (for referral to a lawyer)</b>	6234 4133	<a href="http://lst.org.au">http://lst.org.au</a>

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