

What are my employment rights?
Am I being treated fairly at work?
Where do I go for help?

UNLAWFUL WAGE DEDUCTIONS

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.

This infosheet is designed to help you identify your rights and to take the most appropriate action under the unlawful deduction provisions of the *Fair Work Act 2009* ('the Act').

The Act came into operation on 1 July 2009. If there is already an existing agreement allowing your employer to deduct money from your wages, for example in your employment contract, this agreement must comply with the Act.

Who can use this infosheet?

This infosheet is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including State infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

What are wages?

Wages include:

- allowances
- overtime payments
- penalty rates
- leave payments
- incentive bonuses and loadings.

However wages do not include cars or other goods and services that may be included in a remuneration package.

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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 and Wednesday until 8:30pm.

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

How must wages be paid?

Wages must be paid in money. They must not be paid in goods or services. For example, a baker cannot pay his staff in bread.

Wages must be paid in cash, by cheque or money order, Electronic Funds Transfer (EFT) or a method authorised under your modern award or enterprise agreement. If an applicable modern award or enterprise agreement specifies a particular payment method, your employer must pay your wages by that method.



Wages must be paid in full on a regular weekly, fortnightly or monthly basis.

Can my employer deduct from my wages?

Your employer may make a deduction from your wages if:

- you have given your employer **written authorisation** to make the deduction and the deduction is principally for your **benefit**; or
- your applicable **modern award** or **enterprise agreement** **allows** your employer to make the deduction or you have authorised the deduction in accordance with that award/agreement — so long as the deduction is **reasonable** (see below); or
- a **law, court order** or a Fair Work Commission order authorises your employer to make the deduction.

For example, modern awards may allow your employer to deduct wages and entitlements where you haven't given the required amount of notice of resignation.

Your employer can only lawfully deduct money from your wages if the deduction is:

- for your benefit and you have given a written authority; or
- allowed under your modern award or enterprise agreement and it is reasonable; or
- authorised by a law, Court order or Fair Work Commission order.

What are reasonable deductions?

A deduction is considered to be **reasonable** if:

- Goods or services have been provided to you in the ordinary course of your employer's business and your employer provides the goods or services to the general public on the same or not more favourable terms and conditions.

For example:

- a deduction for a loan repayment made by your employer that is a financial institution; or
- the deduction of health insurance fees made by an employer that is a health fund; and
- the amount of the deduction is not more than the general public would pay for the same or similar services.

- It is for the purpose of recovering costs directly incurred by your employer as a result of your voluntary private use of your employer's property (whether authorised or not).

For example:

- the cost of items purchased on your employer's credit card for your personal use;
- the cost of your personal calls on your employer's phone; or
- the cost of petrol purchased for your private use of a work car.

Unreasonable payments and deductions for your employer's benefit

A term of a modern award, enterprise agreement or an employment contract has **no effect** if it:

- permits your employer to deduct an amount from your wages or requires you to make a payment to your employer or someone else if the deduction/payment is **for your employer's benefit** and it is **unreasonable**; or
- requires you to **spend** any part of your wages and the requirement is **unreasonable**; or
- you are **under 18** and the deduction or payment is not agreed to in writing by your parent or guardian.

For example:

If your employer is a clothing shop, it could be unreasonable for your contract of employment to state that you must spend a certain amount of your wages on clothing from your employer's shop.

Unreasonable requirements to spend money

Your employer **must not** require you to **spend** any part of your wages if the requirement is **unreasonable**.

Authorisations

Written Authorisations

A written authorisation to allow a deduction from your wages may be made **at the time** of the deduction or it may be a part of your **employment contract**.

Your written authorisation must state how much money is to be deducted. It is also a good idea that your authorisation includes the following information:

- whether the deduction is a single one-off deduction or if it will happen more than once;
- who will receive the deduction; and
- the reason for the deduction.

Once you have agreed to the deduction in writing, your employer will be allowed to make the specified deduction/s from your wages.

What if my employer forces me to sign a written Authorisation

If you feel that your employer has placed **undue pressure** or influence on you to agree or not to agree to a deduction from your wages, (e.g. your employer has forced you to sign an authorisation allowing a deduction under threat of dismissal or demotion), the authorisation may be deemed as ineffective by a Court so you can still make a claim under the Act (see 'Making a Claim' on page 4).

What if I am dismissed?

Your employer is prohibited from terminating or threatening to terminate your employment because you have exercised or tried to exercise your rights under the Act. If this occurs you may also be able to lodge a **General Protections Dispute** (See JobWatch's 'General Protections Dispute Termination Claim' infosheet) or an **Unfair Dismissal Claim** (See JobWatch's 'Unfair Dismissal' infosheet).

Also note that you only have:

- **21 days** from the date that you are dismissed to make an Unfair Dismissal Claim or a General Protections Dispute Termination Claim.

Alternatively, if you are concerned that you may be dismissed or treated unfavourably by your employer if you send a demand letter to your employer for repayment of the amount deducted or if you make a claim under the Act, you may consider delaying your claim, for example, until you get a new job. This is because you have **6 years** from the date of the unauthorised deduction or unlawful payment occurring to file a claim in Court.

Nevertheless, the longer you wait, the more difficult it may become to recover any money. For example, your employer may go out of business and cease to exist meaning you may not be able to recover any money at all.

Underpayment or non-payment of wages

You may also have a claim for underpayment or non-payment of your wages or entitlements, including if your wages have not been paid in full. If so, you can request assistance from the **Fair Work Ombudsman (FWO)** to recover your unpaid wages (see 'Where to get help' on page 6).

Please note there is a 6 year time limit from the date your wages are due to be paid to you to file your claim at Court.

What remedy do you want?

Once you have established that you are eligible to make a claim, you should think about the remedies that you want.

The **Federal Court** or **Federal Circuit Court** can make the following orders:

- an order that stops your employer from unlawfully deducting money from your wages;
- an order that your employer pay any amount owing to you plus interest;
- any other order that it considers appropriate; and
- on application, it may impose a monetary penalty on your employer. An individual employer can be ordered to pay up to approximately \$10,000 and an employer who is a company can be ordered to pay up to approximately \$54,000.

Making a Claim

There are three steps you may take in making a claim

1. LETTER OF DEMAND

Before you take action under the Act, you should consider first sending a letter of demand to your employer requiring that your deducted wages be repaid to you or that you are paid correctly. An example of a demand letter is attached to this infosheet. **You should keep a copy of this letter as a record.**

An example of a demand letter is at the back of this infosheet.

This letter should specify that if the correct payment is not made within a specified timeframe, then you will request assistance from the FWO.

You can send a demand letter either during your employment or after you have left your employment. If you are still employed, you should consider that, although it may be unlawful, your employer may decide to dismiss you when it receives your letter of demand.

If you have concerns, you should speak to JobWatch, the Fair Work Infoline, or a lawyer (see 'Where to get help' on page 6) before taking any action.

2. APPLY FOR ASSISTANCE FROM THE OFFICE OF THE FAIR WORK OMBUDSMAN

If your letter of demand is unsuccessful, you can then lodge a **My Account Enquiry Form** with the Fair Work Ombudsman. The My Account Enquiry Form is accessed through **My Account** on the Fair Work Ombudsman website (www.fairwork.gov.au). See 'Where to get help' on page 6.

You have **6 years** from the date of each deduction to file your claim in Court but you should make your request for assistance with the FWO sooner because your employer may lose your employment records or go out of business and cease to exist. The FWO will also need time to process and investigate your complaint.

If you are unsure about time limits, you should obtain legal advice as soon as possible (see 'Where to get help' on page 6).

What happens next?

Once the FWO has received your request, they should investigate the matter and/or schedule a mediation.

If FWO thinks your employer is unlawfully deducting money from your wages, it may ask for your employer's pay records and/or send a compliance letter to your employer/former employer.

3. TAKING FURTHER ACTION

If your employer does not comply with the Fair Work Ombudsman's request, then the following options could be available:

- The FWO may decide to take your employer/former employer to Court; or
- If the FWO decides not to do this, you may take your employer/former employer to Court.

See JobWatch's 'Making a Small Claim in the Federal Circuit Court' Self-Representation Kit available at www.jobwatch.org.au.

Where to get help

For further information regarding unlawful wage deductions you may wish to contact the relevant organisations below:

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

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Example Letter of Demand for employees seeking to recover wages deducted unlawfully by their employer

Sue Worker
Sue Worker's Address

Mr John Employer
Smiths Furniture Pty Ltd
12 Eden Street
ABBLEASTY 4567

14 July 2016

Dear Mr Employer

Payment of wages deducted unlawfully, employee no. 123456

On 2 July 2016 whilst driving to work, I had an accident in my work vehicle. The accident was not the result of negligence or recklessness on my behalf.

On 5 July 2016, you told me that you would be deducting the amount of the insurance excess from my wages. I told you that I did not agree to this deduction.

On 10 July 2016, you deducted \$750 from my monthly wages without my written authority.

I believe that this deduction was unlawful because it was not authorised by me in writing and it was not a reasonable deduction in the circumstances.

Please arrange for payment of this amount to be made immediately. In the event that payment is not received within 14 days of the date of this letter, I will consider filing a complaint with the Fair Work Ombudsman and/or commence legal proceedings against you to recover this money and my costs.

Yours faithfully,

Sue Worker