

Superannuation

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 a superannuation fund. 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.

Who should receive super?

Most employees are entitled to superannuation contributions from their employer, including permanent full-time and part-time workers, and casual 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 considered employees for superannuation purposes. If you are unsure about your entitlements, you should contact the Australian Taxation Office (ATO) for clarification.

Some employees are not entitled to superannuation. This group includes those who are under 18 years of age and work 30 hours or less per week, and those who do domestic work for 30 hours or less per week.

How much money must my employer contribute?

The minimum contribution rate that must be paid by your employer into a superannuation fund can be found on the ATO website: ato.gov.au

Your earnings base usually includes your total wages (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.

Note!

The minimum employer contribution rate is exactly that – a minimum. Some employees may receive a higher employer contribution rate if it is stated in their employment contract or an applicable Enterprise Agreement.

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 employees and prospective employees in Victoria, Tasmania and Queensland only. If you are not from these states, you should obtain advice about your specific case as soon as possible.

How much money must my employer contribute? (cont.)

Employers are required to make contributions to your fund for each quarter by specified dates. Your applicable Modern Award, Enterprise Agreement or employment contract may require your employer to make contributions more often.

Super amounts paid by your employer must be shown on your payslips, and will also appear on statements issued by your superannuation fund.

When can I access my super?

Most super benefits will be 'preserved benefits'. Access to preserved benefits depends on your preservation age (typically between 55 and 60 years, depending on your date of birth) and your retirement from the workforce. Contact the ATO 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.

Contact your particular superannuation fund for more information about how you might be able to access your super on these grounds.

What should I do if I think my employer has not paid my super correctly?

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 Superannuation Standard Choice 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 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, contact the ATO. This can also be done as an 'anonymous tip', and the ATO will keep you informed of the progress of your report.

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

Superannuation payments, even though paid on your behalf, are not owed directly to you. If your employer has failed to make contributions, they are monies owed to the ATO. This means that you can take legal action personally against your employer to recover unpaid superannuation only if your Enterprise Agreement, applicable Modern Award or employment contract specifically requires your employer to pay super. Otherwise, you must rely on the ATO to recover your super.

Australian Tax Office

Phone: 13 10 20

Website:
ato.gov.au

What should I do if I think my employer has not paid my super correctly? (cont.)

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, General Protections Dispute or 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 or a General Protections Dispute - Termination claim.

Where to get help

JobWatch's free and confidential Telephone Information Service

P: (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

W: jobwatch.org.au

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission	1300 799 675
Australian Tax Office	13 28 61
Community Legal Centres Australia	02 9264 9595
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	03 6234 4133

Please refer to JobWatch's 'Getting Paid and Underpayments', 'Unfair Dismissal' and 'General Protections Dispute - Termination claim' infosheets, and 'Small Claims Kit' for further details.

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JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.