

Getting Paid and Underpayments

All employees are entitled to a minimum rate of pay.

Most employees have their minimum wages and casual loadings set and adjusted by the Fair Work Commission (FWC). FWC has the power to set and adjust:

- The Federal Minimum Wage (for employees not covered by a Modern Award or Enterprise Agreement).
- Rates of pay for employees covered by Modern Awards.
- Special federal minimum wages for junior employees, apprentices and trainees and employees with disabilities.

Your minimum wage could also be set by an Enterprise Agreement, which is a collective agreement made between an employer and a number of its employees.

Things that can affect your rate of pay

If you are covered by a Modern Award, your minimum rate of pay will depend on your 'classification' within the Modern Award.

Below is a list of some of the factors that may affect your classification. This is the kind of information to give the Fair Work Infoline when you contact them to find out your minimum wage rate. Factors that can affect pay rates:

- whether your employment is full time or part time;
- whether you are a permanent or casual employee;
- the kind of job being performed;
- your seniority;
- whether you supervise or train other workers;
- whether you open and close the business;
- what kind of qualifications are required;
- if long shifts are required;
- if overtime is worked;
- if you are a trainee or apprentice;
- what industry you work in;
- your age; and/or
- whether you have a disability and are employed under the Supported Wage System

When should the rate of pay go up?

Your minimum pay rates may go up:

- when you get a promotion;
- If you are on a junior rate and turn a year older;
- if you are an apprentice, and progress to the next year of the apprenticeship;
- when an Enterprise Agreement says so; and
- when a pay increase is awarded by FWC.

Note!

You may be paid a higher rate of pay under your employment contract but it is unlawful to be paid at a rate below the applicable minimum rate for your work.

Disclaimer

This Fact Sheet 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 Fact Sheet 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.

When should the rate of pay go up? (cont.)

Some jobs in professional or semi-professional areas (especially when people are being paid more than the minimum rate) have salary or performance reviews where pay increases may be awarded. These types of increases are often a percentage of the employee's annual wage and may occur annually.

Superannuation (Super)

Superannuation is calculated as a percentage of your gross ordinary time earnings. Therefore when your pay goes up, so should your employer's contribution to your superannuation fund.

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

If your super is not being paid at the correct rate, or is not being paid at all, contact your super fund or the Superannuation Infoline on 131 020.

When should I be paid?

You must be paid at least monthly. Most employees are paid monthly, fortnightly or weekly. Check the applicable Modern Award, Enterprise Agreement or your employment contract to see whether it stipulates how frequently you should be paid.

Before you start a job, always check what the pay rate is and how often you will be paid.

How should I be paid?

You must be paid in some form of money, not in goods or in kind. Employees are usually paid by electronic funds transfer (cash deposited electronically into your bank account), in cash or by cheque. Check the applicable Modern Award, Enterprise Agreement or your employment contract to see whether it says how you should be paid.

Pay slips

Every time you are paid, you should also receive a pay slip. Information that must be on every pay slip includes:

- the name of the employer and employee;
- the employer's ABN (if any);
- the date of payment;
- the employee's ordinary hourly rate;
- the number of hours the employee worked;
- the gross and net amounts paid;
- amounts deducted from the employee's gross pay; and
- the amount of any superannuation contributions made on the employee's behalf.

If you are covered by an Enterprise Agreement, more information than the above may be required.

Note!

If you have not received a pay increase to which you are entitled under a Modern Award or Enterprise Agreement, you have been underpaid. For further assistance, contact JobWatch, your union, or a lawyer.

See JobWatch's 'Superannuation' Fact Sheet for more information.

Note!

If you are not receiving payslips or they are not in the correct form, contact the Fair Work Infoline.

Fair Work Ombudsman

Phone: 13 13 94

Website:
fairwork.gov.au

Unauthorised deductions

Generally, an employer cannot deduct amounts from your wages without your prior written consent.

Your employer may make a deduction from your wages if:

- you have given your employer written authorisation (see below) 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.

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. E.g:
 - 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). E.g:
 - 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 deductions

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 employment contract to state that you must spend a certain amount of your wages on clothing from your employer's shop.

Note!

A tax declaration gives your employer permission to take income tax from your wages and pay it to the Australian Taxation Office. Paying tax in this way is not an unauthorised deduction.

Note!

Unreasonable requirements to spend money: Your employer must not require you to spend any part of your wages if the requirement is unreasonable.

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.

Underpayments

When you are paid less than the minimum wage rates or don't receive other employment entitlements, this is called an underpayment. Other employment entitlements that can be claimed through the Fair Work system include:

- Leave and termination payments, such as for untaken annual leave, pay in lieu of notice and redundancy pay.
- Any payments owing under a Modern Award or Enterprise Agreement, such as allowances, loadings etc.
- Superannuation, if you are entitled to it under a Modern Award, Enterprise Agreement or employment contract.
- Entitlements under an employment contract on a subject matter that is covered by the National Employment Standards (NES), or that may be covered by an Award (regardless of whether you are covered by an Award), such as wages, commissions, allowances and leave payments.
- Payment for untaken long service leave, but only if you are entitled to long service leave under an Enterprise Agreement or employment contract, under a preserved pre-Modern Award entitlement, or if you are claiming long service leave under state legislation along with other federal entitlements. For further assistance, contact JobWatch, your union, or a lawyer.

If you are being underpaid, or not paid at all, for any of these entitlements, you can take steps to recover the money that is owed to you. These steps are summarised below. You have **6 years** from when the payment became due to file a claim in court for the amount owed to you.

1. Letter of Demand

As a first step, you should consider writing to your employer demanding payment of your unpaid entitlements and/or provision of payslips by a certain time, e.g. within 7 days from the date of your letter. You should inform your former employer that if it does not pay, you will file a complaint with the Fair Work Ombudsman (FWO) without further notice. You should also keep a copy of your letter of demand for future reference.

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.

Note!

The Fair Work Infoline (13 13 94) can tell you if you are covered by the NES, a Modern Award or an Enterprise Agreement and what your entitlements are.

Note!

Sample letters of demand can be found on the JobWatch website.

2. Fair Work Ombudsman Request for Assistance

If you have not succeeded in having your employer pay the correct entitlements and/or provide payslips, the most cost-effective and straightforward way to recover those entitlements is by lodging a Request for Assistance with the Fair Work Ombudsman (FWO), by registering for a free account on their website. You can then lodge your complaint. The FWO may investigate the matter and try to resolve it, through mediation, the issuing of a compliance notice to the employer, or court action.

File your FWO Request for Assistance as soon as possible because your employer may lose your employment records or go out of business. You should make your FWO complaint well before the **6 year** time limit so that the FWO has time to process and investigate your complaint.

3. Court Proceedings

If the FWO cannot recover your entitlements and will not be taking your matter to court on your behalf, you can commence proceedings under the *Fair Work Act 2009 (Act)* in the Federal Circuit and Family Court of Australia.

Depending on the amount of your claim, you could elect to use the relatively informal small claims process. If you are making a claim before 1 July 2023, the amount of your claim must be less than \$20,000. On 1 July 2023, this 'cap' for a small claim increases to \$100,000.

This process is designed for use by self-represented employees claiming employment entitlements only, and legal representation is not required.

If you elect not to use the small claims process, you may also be able to seek compensation and penalties against the employer for contraventions of the Act, including non-provision of payslips, in addition to the amounts you are owed. Legal advice and representation is strongly recommended.

In claims under the Act, where the employer is required to keep records of hours worked and amounts paid and has not done so, the onus is on the employer to disprove your claims about these matters. Additionally, legal costs are generally not awarded against the losing party, except in limited circumstances, including if you:

- Instituted the proceeding vexatiously or without reasonable cause; or
- Caused costs to be incurred because of an unreasonable act or omission in connection with the conduct of the proceeding.

It is also possible to file a claim for damages for breach of the employment contract in a state court or tribunal. This can be complex and expensive and carries the risk of paying the employer's legal costs if unsuccessful.

What if my employer takes action against me?

If you are dismissed because you enquired about your pay or payslips, lodged a Request for Assistance with the FWO or commenced legal proceedings to claim entitlements, you may have grounds to lodge an unfair dismissal claim or a General Protections Dispute - Termination claim. You have **21 days** from the date of dismissal to file one of these claims at the Fair Work Commission.

Fair Work Ombudsman

Phone: 13 13 94

Website:
fairwork.gov.au

Note!

For a more detailed explanation, see the JobWatch self-representation kit 'Making a small claim under the *Fair Work Act 2009*'.

Note!

Contact the court regarding the appropriate forms.

Note!

For further assistance, contact JobWatch, your union, or a lawyer.

See JobWatch's 'Unfair Dismissal', 'General Protections Dispute – Termination claim' and 'General Protections Dispute – Non-Termination claim' Fact Sheets for more information.

What if my employer takes action against me? (cont.)

In addition, if your terms and conditions of employment are altered to your detriment, or any other adverse action is taken against you as a result of having raised these issues with your employer you may have grounds to make a General Protections Dispute - Non-Termination claim, within **6 years**.

Victorian employees may also be able to make a claim for employment activity discrimination under the *Equal Opportunity Act 2010* if they are treated unfavourably for enquiring about their pay. For further assistance, contact JobWatch, your union, or a lawyer.

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
Fair Entitlements Guarantee (FEG)	1300 135 040
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

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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.