

Fact Sheet – Wages for national system employees

This fact sheet applies to national system employees only. For information on how to work out whether you are a national system employee, you can read our fact sheet – “National system employee or state system employee: which one are you?”.

If you are a state system employee, see our fact sheet – “Wages for state system employees”.

This fact sheet provides information about wages (also known as your pay). It covers the following topics:

1. How much should you be paid?
2. How should you be paid?
3. How often should you be paid?
4. Do you have a right to receive pay slips?
5. Can you ask for a copy of your employee record?
6. Can your employer deduct money from your pay?
7. What can you do if your employer has deducted money from your pay unlawfully?
8. What can you do if your employer doesn't pay you or underpays you?
9. What can you do if your employer is insolvent and hasn't paid you?
10. What happens if you have been overpaid?

1. How much should you be paid?

The amount that you should be paid depends on a number of things, such as how much your employer promised to pay you, which job you're doing, which industry you're working in, who your employer is, your age, whether you're an apprentice and the hours you're working.

To work out how much you should be paid, there are 4 main things to look at:

- (a) Are you entitled to a particular wage under your employment contract?
- (b) Are you entitled to a particular wage under an award?
- (c) Are you entitled to a particular wage under an industrial agreement?
- (d) Are you entitled to be paid the minimum wage?

Each of these topics is explained below.

(a) Are you entitled to a particular wage under your employment contract?

If you have a written employment contract, you should check the contract to see if it mentions a particular wage that you should be paid.

If you have a written employment contract but it doesn't say how much you should be paid, or you don't have a written employment contract at all, have a think about whether your employer ever promised you that you would be paid a certain amount. If your employer did promise you that you would be paid a particular wage – for example, verbally, or in an email – then you may be entitled to that wage under your employment contract.

If your employer never promised to pay you a certain amount, then you should check whether you're entitled to be paid a particular wage under an award or industrial agreement or whether you're entitled to the minimum wage.

Usually, the wage promised in your employment contract cannot be lower than a wage you're entitled to under an award or industrial agreement, or than the minimum wage.

The wage promised in your employment contract can be higher than a wage you're entitled to under an award or industrial agreement, or than the minimum wage. It shouldn't be lower.

For more information on employment contracts, see our fact sheet – "Employment contracts".

(b) Are you entitled to a particular wage under an award?

An award is a legal document that sets out minimum conditions of employment for employees in a specific occupation or industry – such as the hairdressing and beauty industry, the hospitality industry or the retail industry.

Most awards contain a range of wages that depend on what your duties are, how long you've been working for your employer, whether you have a particular qualification, whether you supervise other staff and so on. Sometimes, you may be entitled to a higher rate of pay than the base wage if you are entitled to penalty rates or loadings (for example, for working overtime, or on public holidays or as a casual employee).

To find out if you're covered by an award, call the Fair Work Infoline on 13 13 94 or see the information and tools available at www.fairwork.gov.au.

If you *are* covered by an award, the Fair Work Infoline should be able to tell you what your award rate of pay should be. As well as finding out the rate of pay under the award, you should look at whether a wage under an industrial agreement applies to you instead of the wage under the award – see the next topic below.

If you're *not* covered by an award, then you should check whether you're entitled to a particular wage under your contract or to the minimum wage.

(c) Are you entitled to a particular wage under an industrial agreement?

In some workplaces where the employees are covered by an award, the employees and the employer will enter into an industrial agreement that is registered with an industrial relations commission, such as the Fair Work Commission. In this situation, the industrial agreement applies instead of the award. Generally, an industrial agreement will not be registered unless it leaves the employees better off overall than they would have been under the award. Common types of industrial agreements include enterprise agreements and enterprise bargaining agreements.

If you're not sure whether you're covered by an industrial agreement, contact the Fair Work Infoline on 13 13 94.

If you're covered by an industrial agreement, you will be entitled to the rates of pay set out in the industrial agreement rather than those set out in the award.

If you're not covered by an industrial agreement, but you are covered by an award, then the rates of pay set out in the award will apply to you.

If you're not covered by an award or an industrial agreement, then you should check whether you're entitled to be paid a particular wage under your contract or the national minimum wage.

(d) Are you entitled to be paid the minimum wage?

The minimum wage is the minimum amount employees must generally get paid.

Some employees aren't entitled to the full adult minimum wage, including:

- people under 21 years of age;
- apprentices and trainees; and
- people with a disability who get paid an assessed wage.

From 1 July 2020, the minimum wage for permanent adult national system employees is \$19.84 per hour or \$753.80 per week.

If you're entitled to a wage under an employment contract, award or industrial agreement that is higher than the minimum wage, then it is likely that the higher wage applies.

To find out the minimum wage that applies to you, call the Fair Work Infoline on 13 13 94.

2. How should you be paid?

You must be paid for any work you do *in full*, unless your employer is allowed to deduct money from your pay for some reason – see topic 6 below.

You must also be paid for any work you do *in money* (eg. cash, cheque, electronic funds transfer etc), as opposed to being paid in goods or services.

3. How often should you be paid?

You must be paid monthly, or more often.

4. Do you have a right to receive pay slips?

Your employer must give you a pay slip within one working day of paying your wages.

If your employer does not give you a payslip, you can call the Fair Work Infoline on 13 13 94.

5. Can you ask for a copy of your employee record?

Your employee record is different from your personnel or HR file. Your employee record must include specific information required by law or by an applicable award or industrial agreement.

Your employer must keep records about:

- basic employment details such as your name, your employer's name and the nature of your employment (eg. part-time, full-time, permanent, temporary or casual); and
- pay; and
- overtime hours; and
- averaging arrangements; and
- leave entitlements; and
- superannuation contributions; and
- termination of employment (where applicable); and
- individual flexibility arrangements and guarantees of annual earnings.

Your employer must keep these records for 7 years. If you request it, your employer (or former employer) must make a copy of your employee record available for inspection and copying. If they do not give you access to your employment records, you can call the Fair Work Infoline on 13 13 94.

6. Can your employer deduct money from your pay?

As discussed above, your employer must generally pay you for any work you do in full. However, there are some situations where your employer can deduct money from your pay.

Your employer can deduct money from your pay if:

- the deduction is authorised in writing and is principally for your benefit; or
- the deduction is authorised under an award, industrial agreement, an order of the Fair Work Commission or a court, or under a state or national law.

However, even if a deduction is authorised by one of the above documents, it won't be allowed if it is directly or indirectly for your employer's benefit and is unreasonable.

Here are some examples of situations where your employer probably *can* deduct money from your pay:

- You've entered into a salary sacrificing arrangement with your employer, in writing;
- You've agreed, in writing, for \$4 of your pay to go towards the staff social club each fortnight;
- You use the work mobile phone for your own personal calls, as well as work calls, and have agreed in writing to pay for your personal calls;
- Your award says that the employer can deduct money from your pay if you don't give the employer the required amount of notice that you're leaving, and you fail to give the required amount of notice under the award when you resign.

Here are some examples of situations where your employer probably *cannot* deduct money from your pay:

- You work in retail and your employer deducts money from your pay to cover a shortage in the till at the end of your shift;
- You work at a petrol station and your employer deducts money from your pay to cover the cost of customers driving off without paying for petrol.

If your employer has deducted money from your pay and you're not sure about whether your employer is allowed to do that or not, contact the Fair Work Infoline on 13 13 94.

You should be aware that in some situations, it might be unlawful for your employer to deduct money from your pay but you might still be legally required to pay your employer that money.

For example, if you resign and do not give the amount of notice you're required to give under your contract, your employer might deduct money from your final pay. If you haven't authorised this in writing, it might be unlawful for your employer to do this. But it is probably not worth making a legal claim against your employer because your employer could make a breach of contract claim against you for not giving the agreed notice. You would probably end up having to pay your employer roughly the same amount of money that they deducted.

If you aren't sure about whether you are legally required to pay your employer the money that was deducted, you may wish to seek legal advice.

7. What can you do if your employer deducts money from your pay unlawfully?

Unauthorised deductions are breaches of the national employment law known as the *Fair Work Act 2009* (Cth). If you think your employer has acted unlawfully, you can call the Fair Work Infoline for further information. Sometimes the Fair Work Ombudsman will assist employees who want to recover an unlawful deduction.

Alternatively, read on for information on how you can try to recover the unauthorised deduction yourself.

8. What can you do if your employer doesn't pay you or underpays you?

If your employer doesn't pay you, or underpays you, the first step is to work out exactly how much you should be getting paid and where that rate of pay comes from – e.g. your employment contract, an award, an industrial agreement, or the minimum wage. As previously mentioned, if you are entitled to different rates of pay from different sources, you will generally be entitled to the higher rate of pay.

Once you've worked out how much you should be getting paid, you may want to approach your employer with your calculations and ask them to pay you what you're owed. Often, it's a good idea to do this in a letter to your employer and keep a copy of that letter so that you have a written record of the fact that you tried to resolve the matter.

If your employer still doesn't pay you the wages you're owed, the next step depends on where your rate of pay comes from – that is, whether it comes from your employment contract, or whether it comes from an award, an industrial agreement or the minimum wage.

Recovering your wages under an employment contract

If your rate of pay comes from your employment contract, you can see our Information Kits "Making a denial of contractual benefits claim" and "Making a breach of contract claim". These information kits tell you how to make a claim against your employer for a denial of contractual benefits or a breach of contract.

You cannot make more than one claim against your employer based on the same set of facts – you must choose between making a denial of contractual benefits claim and making a breach of contract claim.

You usually have 6 years from the date of an underpayment or non-payment to make a claim. You may be able to make a claim outside of this period however it is very difficult to get a claim accepted outside the normal limitation period.

If you have any questions, you may wish to seek legal advice.

Recovering your wages under an award, an industrial agreement or the minimum wage

If your rate of pay comes from an award, an industrial agreement or the minimum wage, you can contact the Fair Work Ombudsman via the Fair Work Infoline on 13 13 94. The Fair Work Ombudsman is a government body that might be able to help you to recover wages from your employer.

If the Fair Work Ombudsman can't help you, you can read our Information Kit– "Making a claim for unpaid minimum entitlements". You usually have 6 years from the date of an underpayment or non-payment to make a claim. You may be able to make a claim outside of this period however it is very difficult to get a claim accepted outside its normal limitation period.

If you have any questions, you may wish to seek legal advice.

9. What can you do if your employer is insolvent and hasn't paid you?

If you have been made redundant due to the insolvency/liquidation of your employer and as a result your employer is unable to pay out your owing entitlements (including redundancy pay,

annual leave and unpaid wages), then you may wish to see if you are eligible to claim these payments through the Australian government's Fair Entitlements Guarantee (**FEG**) assistance scheme.

For more information see <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg> or call the FEG hotline on 1300 135 040.

10. What happens if you have been overpaid?

If your employer has made a mistake and overpaid you, you are generally required to pay back any money you have been overpaid. Your employer would have 6 years to claim this money back from you. If the amount of money to be repaid is large, you may be able to work out a reasonable payment plan with your employer to return the money.

There may be some situations where you can argue that the employer should not be able to claim back the overpayment from you. However, this is a complicated argument to make and you should seek further legal advice about your specific situation if you have been overpaid.

11. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111
Web www.elcwa.org.au

Fair Work Commission

Address Level 16,
111 St George's Terrace, Perth 6000
Tel 1300 799 675
Fax 08 9481 0904
Web www.fwc.gov.au
Email perth@fwc.gov.au

ATO's Superannuation Infoline: 13 10 20

Fair Entitlements Guarantee: 1300 135 040

12. Disclaimer

By using this publication and the information* contained within it, you agree that:

The Employment Law Centre of WA (Inc), and its directors, employees and agents (**ELC**), do not accept responsibility for any consequences, including loss and/or damage, arising from your access to, or use of, the information contained in this publication, or from your reliance on any materials contained within this publication.

While the information has been formulated with all due care, ELC does not guarantee the accuracy, currency, reliability or correctness of any of the information, nor that the information provided is exhaustive. This publication, and all the information therein, is intended to be for informational purposes only and is not intended to provide or replace specialist legal advice.

ELC does not accept responsibility for the accuracy, currency, reliability or correctness of any information included within the publication that has been provided by third parties, including third party website links.

None of the information or materials provided within this publication may be used, reproduced or transmitted, in any form or by any means, without written permission from ELC.

Ultimately, you use this publication, and the information contained within it, at your own discretion and risk. You accept as a condition of your use of this publication and the information contained therein that you will make no claim for any loss, damage or expense that may arise from your use of publication, or your reliance on any of the information contained within it.

If you have concerns or questions about any of the above, you should contact ELC for assistance on 1300 130 956.

*Information includes any and all data, documents, pages and images.