

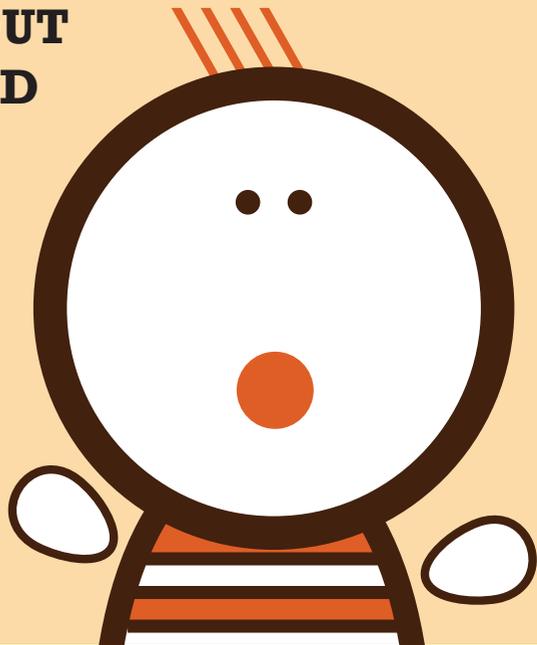


Ripped OFF?

**YOUR RIGHTS ABOUT
UNPAID WAGES AND
ENTITLEMENTS
AT WORK**



100%
GOOD READ
GUARANTEED



Far West
Community Legal Centre

Legal Aid
NEW SOUTH WALES

This information is a general guide to the law. It should not be relied on as legal advice. If you have a specific legal problem you should consult a lawyer.

It applies to people who live in, or are affected by, the law as it applies in NSW, Australia.

Ripped Off? Your rights about unpaid wages and entitlements at work.

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Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service NRS. Ask for LawAccess NSW on **1300 888 529**.

What is this?

As an employee you have certain rights under the law; you should be paid correctly, receive the correct entitlements from your employer and be treated fairly in the workplace. Unfortunately, some employees can be “ripped off” by their employers. Some employees may not realise that they are receiving the incorrect pay or not receiving the benefit of all their entitlements.

This guide is about what it means to be an employee, how to check what type of employee you are, what your minimum entitlements are, and how to check if your superannuation is being paid correctly. Most importantly, this guide will tell you where to get help if you feel you have been wronged by your employer.

If you feel like you are not being paid the correct amount, not receiving all of your entitlements or you are unsure about your rights at work, then this guide is for you.

Abbreviations List

ATO	Australian Taxation Office
CIM	Chief Industrial Magistrate’s Court
EA	Enterprise Agreement
FEG	Fair Entitlements Guarantee
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
NES	National Employment Standards

Working for the NSW State Government
or a local council in NSW?



If you are, this guide might not be for you. NSW State Government employees and employees of Local Councils in NSW are not covered by the Federal system, which is what this guide gives information about.



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Am I an employee?

There are lots of different ways that a person can work. For example, you can:

1. Be employed as an employee;
2. Volunteer – usually you are not paid if you volunteer;
3. Do work experience as a student placement;
4. Run your own business by working as an independent contractor.

Volunteers usually don't get paid for work at all. There is a clear understanding by everyone concerned – the organisation and the person doing the work – that the work is done as a gift to the organisation. Sometimes, organisations might pay the costs of petrol or bus and train fares – but this will not turn a volunteer into an employee.

Also, work experience students, who work with an employer during their studies, are usually volunteers, and do not expect payment.

If you are an independent contractor:

- You are responsible for paying your own tax;
- You can work when you want to;
- You usually provide your own tools;
- You don't get paid holidays or sick leave;
- You may get paid for each task you finish;
- The person who hires you usually does not take tax out of your pay and does not integrate you into their workplace or organisation (for example you don't usually have to attend staff training or wear a uniform).

If you have an ABN and a written agreement that says you are a contractor, then you are probably a contractor, even your work situation is like you are an employee. However, even if you work for yourself as an independent contractor, the person or company you work for may still have to pay you superannuation in some cases and may still have work, health and safety responsibilities for you.

If you are not sure about whether you are an independent contractor or an employee, you should get legal advice. If you are not sure whether you should get superannuation as an independent contractor, you can contact the ATO. If you are a contractor and you are worried about work, health and safety, you can contact SafeWork NSW.

Probation or Training



It is usually illegal to require an employee to work for free during a probation or training period.

Deciding whether you are an employee, an independent contractor, or a volunteer can be difficult. For example, some people might be given a “gratuity” (a small sum of money) for volunteering or might be described as a contractor by their employer when they are actually an employee.

If it is not clear to you whether you are an employee or not, you should get advice from a lawyer to help you – see Getting help.

Case Study

Noah had been looking for work for a while. He found an ad in his local paper – a company was looking for a receptionist. He went for an interview, and was asked to start work soon after. He was given a job description, and asked to fill in forms for tax and also given an induction. Noah was told by the boss that because he was young and this was his first office job that he would need to do a job trial.

During the trial, he was expected to turn up for work, and do the job, but was not going to be paid, because it was “volunteer work”. Because he was a “nice guy” his

boss told him that he would give him \$100.00 a week to cover his petrol.

Noah worked for 3 months and then was told that he was not going to be employed because he “did not fit in”. Noah was really upset! He had really worked hard, and everyone seemed happy with his work. He saw a lawyer who contacted the employer and pointed out that Noah was entitled to be paid wages for his work.

The company had back-paid Noah for all the work he had done. He was not a volunteer at all but instead had an employment relationship with the company.

Case Study

Chloe is a cleaner. She applied for a new job because it was closer to home. The new boss told Chloe she'd have to get an ABN before he could take her on. Chloe got an ABN and signed a contract. The contract said she was contractor. The work was the same as her other cleaning jobs, but Chloe has to submit invoices to the boss to get paid. Chloe gets paid about the same money as her previous jobs, but she doesn't get any sick days or holiday pay.

Chloe sees a lawyer about her situation. The lawyer told her that if the new contract says she is an independent contractor, then that is probably what she is. The lawyer also told her that the company might still have to pay her superannuation even though she may not be an employee and that she could make a complaint to the ATO.

Chloe got another job the next week as a permanent employee with another cleaning company with holiday pay, sick pay and carers leave. Chloe made a complaint to the ATO about her superannuation and the company ended up paying her superannuation on all the money that she earned.

If you're not sure if you're a contractor or employee, get some advice. If you are an employee and the boss asked you to become an independent contractor, get some advice. If you are an independent contractor and you think you're getting paid less than the Award, get advice.



What type of employee am I?

You think that you are an employee. Your employer treats you as an employee, and you have tax taken out of your wage each pay. But what type of employee are you legally? This is an important question – the type of employee you are will change what you are entitled to.

Basically, you can be employed to work in 3 different ways:

Full time

An employee who works full time is usually contracted to work about 38 hours a week. Full time employees may also receive:

- Paid leave (for example, personal (sick) leave and holiday pay).
- Guaranteed regular, weekly hours of work.
- Minimum notice requirements if your employment is terminated.

Part time

Part time employees usually work less than 38 hours a week. The work hours of a part-time employee are usually regular, with little change from week to week. Also, there is an expectation that the employment relationship with the employer will continue. Part time workers may also receive:

- Paid leave (for example, personal (sick) leave and holiday pay).
Guaranteed regular, weekly hours of work, that can't usually be altered without your agreement.
- Minimum notice requirements if your employment is terminated.

Casual

Casual workers are hired to work irregularly. That means that there is no expectation, certainty or guarantee of ongoing work, fixed shifts or hours. Casual employees are hired only from the start of their workday or shift, to the end of their workday or shift. Casual employees **don't** get:

- Paid leave (personal carer's leave, holiday pay, sick leave and so on);
- Guaranteed regular, weekly hours of work;
- Minimum notice requirements if your employment is terminated or your job is made redundant.

Because of this, casual employees may be entitled to a casual loading of 25% more pay than part time or full-time employees.

Case Study

Olivia worked for a fast food restaurant. She knew when she was working by ringing up every Sunday to find out when she was rostered to work.

Some weeks she worked lots of hours, but other weeks, she worked little to no hours at all. There were no set days that she worked every week.

She was paid at a higher rate an hour than her co-workers who worked part time or full time (25% an hour more) – but she did not get paid holidays or sick leave like they did.

Olivia's work was truly casual.



Case Study

Ella worked at a restaurant. She worked the same hours every week. It was a small workplace, with only 2 other employees. She had been working there for 2 years. There had never been any change in the days that Ella worked or the times that she worked. She was paid as a 'casual' with a loading on top of her hourly pay rate. A family emergency came up, and Ella needed to take off 2 weeks of leave.

Her boss told her that as she was a 'casual' she was not entitled to be paid for any leave. Ella saw a lawyer to get advice about her situation. Ella was advised that as her employment contract stated she was a casual employee, she was not entitled to any paid leave like annual leave. Ella spoke to her boss and arranged to take unpaid leave.



How do I know what my employment contract says?

If you are an employee, you have a contract – employment is a contractual relationship between you and your employer.

Contract of employment

It is important to know that an employment contract can be made:

- In writing;
- In conversations (and that those conversations can be face to face or happen over the phone – you still have a contract even though it is not in writing); or
- Both in writing and in conversations.

Your terms and conditions of work may be outlined in a letter of offer. As well as a your letter of offer, you may also receive a formal contract that tells you about entitlements and terms and conditions of your employment.

Many employees don't even get a letter of offer – there is just a conversation between the employee and their employer that leads to employment (this happens a lot when you work for a small or medium sized business).

The matters agreed to in the conversation will form part of an oral agreement or contract. For example, if you have a conversation about start and finish times then those details are part of the oral employment contract or agreement.

An Award may also apply to your employment so not every detail about your employment terms will be mentioned in a written letter contract or a conversation.

An Award is a legal document that sets the minimum standards of employment in a particular industry. Awards usually set out the minimum pay rates, entitlements and conditions for each industry. Awards cover most industries. Some employees who are not covered by a specific Award may be covered by the Miscellaneous Award (depending on the industry).

Some employees – such as management workers or professional workers (like lawyers and accountants) are not covered by an Award.

Enterprise Agreement (EA)

Some employers have approved EAs that apply to all employees of that employer. In most cases the EA will replace an Award that might have applied to workers in the employer's business.

If your employer has an EA, it is possible that the pay and conditions are different to the Award. But this can only happen if the EA passes the “better off overall” test, which means the pay and conditions in the EA must be better off overall than in the Award you would have been covered by. Most EAs provide for higher wages with more flexible work hours as well as adjustments of penalties rates etc.

Sometimes the EA might not completely rewrite the Award, but will “import” parts of the Award into the EA. You need to read it carefully to work out exactly what it says. Sometimes you need to read the EA with the Award that applies to your industry to get the full picture of what the EA means.

It can be hard to work out exactly what terms and conditions apply to your employment. If you are not sure, get some help – see Getting help.

If you want clear information about your pay and conditions of work, a good place to start is to ask your employer. If you do:

- Be courteous – don't be confrontational or accuse your employer of anything. Remember that your employer might not know that they are doing something wrong;
- Be clear – ask for exactly what you want to know.

If possible, ask your employer to confirm the answers to your questions in writing, such as via email or letter.

Is there a national minimum wage?



Yes! All workers should be paid at least \$23.23 per hour, or \$882.80 per week for a 38-hour week. However, junior workers (people under 20) can be paid less than this amount.

This rate is current as at July 2023. Check what rates apply at www.fairwork.gov.au. Most Awards require higher minimum rates. Pay rates for apprentices are different to junior rates of pay. Go to www.fairwork.gov.au to find your Award and pay-rate, or www.fwc.gov.au to find your Award or Enterprise Agreement.

If you need more advice, or if your employer can't or won't help you, then visit the Fair Work Ombudsman (FWO) website at www.fairwork.gov.au or see [Getting help](#).

There are several tools on the FWO website that can help:

Pay and Conditions Tool (PACT): You can calculate some base pay rates, allowances, overtime and penalty rates of pay. You can also calculate some pay rates for entire shifts worked over a seven day period.

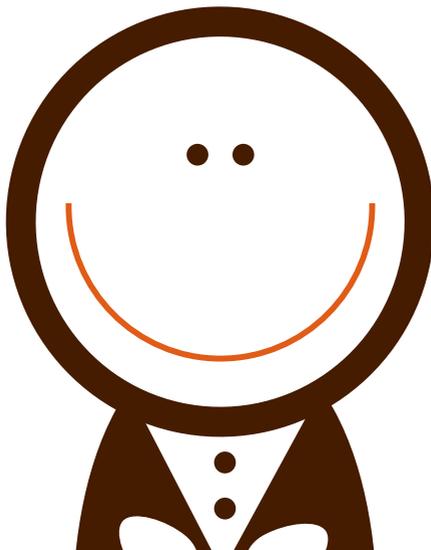
Award Finder: You can search for the Award that applies to your industry and to you.

Industry Pay and Conditions Guides: You can find a summary of pay and conditions under some relevant Awards for the following industries:

- Accommodation, liquor & gaming industry
- Clerical industry
- Fast food industry
- Retail industry
- Hair & beauty industry
- Horticulture industry
- Registered and licensed clubs industry
- Restaurant & cafe industry
- Social and community services industry
- Security industry
- Metal manufacturing industry
- Vehicle industry

If you need help, call the FWO info line on 13 13 94 to speak to an information officer (Line operates Monday to Friday 9.00am to 6.00pm) or visit their website www.fairwork.gov.au – There is an interactive chat session that operates daily.

Also, if you need to find an EA that applies to you, you can look on the Fair Work Commission's (FWC) website at www.fwc.gov.au (under Agreements, Find Agreement) or call the FWO and give the information officer the name and ABN of your employer and they can then find out if an Enterprise Agreement applies to you.



When does my employment contract finish?



There are 2 types of employment contracts:

A fixed term contract – that finishes on a specified date or after the completion of a fixed period, for example traineeship or special project, and

An ongoing contract – which continues until you give notice that you want to finish your employment, or until your employer gives notice to terminate your employment. Your letter of offer or confirmation of employment letter may also set out how your employment can end. Also, Awards and EAs set out how your employment can end.

Case Study

Jack went to work at a club as a barman. When he was offered the job, he was given a short letter from the club confirming:

- His start date;
- His rate of pay;
- His usual hours of work;
- His entitlements to annual leave, sick leave and long service leave.

After working for nearly 5 years, the club started to talk about needing to make people redundant. Jack was not sure what that meant for him. Also, he could not find the Award mentioned in his letter of employment at all!

The letter that he received from the club was really short and did not cover this issue.

Jack rang the FWO. The FWO was able to:

- Tell Jack which Award applied;
- Help Jack work out what the Award and the law said about redundancy entitlements.

In the end, the redundancy did not happen. But Jack now knew what Award applied to him, and what his termination and redundancy entitlements were.



What are my minimum entitlements at work?

The law creates 11 areas of minimum entitlements and conditions. These are called the National Employment Standards (NES). The NES apply to all employees no matter what the pay rate, job description or the industry. These are the basic NES:

1. **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
2. **Requests for flexible working arrangements** – this allows some parents and carers to ask for a change in working arrangements to help with their parental or carers responsibilities.
3. **Offers and requests to convert from casual to permanent employment** – casual employees who have worked for their employer for 12 months must be offered the option to convert to full-time or part-time (permanent) employment by their employer. This is known as 'casual conversion'. Certain eligibility requirements need to be met for this to occur.
4. **Parental leave and related entitlements** – up to 12 months unpaid leave for each worker parent, plus the ability to ask for an additional 12 months unpaid leave. This NES also applies in cases of adoption and same sex parenting. Some 'long term' casual employees are entitled to parental leave. After the period of parental leave ends the employee has the authority to return to their job.
5. **Annual leave** – 4 weeks paid leave per year, plus an additional week for certain shift workers. This NES does not apply to casual employees.
6. **Personal / carer's leave and compassionate leave** – 10 days paid personal / carer's leave, two days unpaid carer's leave as needed, and two days compassionate leave as needed. This NES does not apply to casual employees. All employees (including casuals and small business employees) are entitled to 10 days of unpaid domestic and family violence leave per year as part of the NES.

- 7. Community service leave** – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- 8. Long service leave** – For most NSW workers the *Long Service Leave Act 1955* (NSW) will still apply. Some Awards and EAs also set out these entitlements.
- 9. Public holidays** – a paid day off on a public holiday, except where the worker is reasonably asked to work. Casuals are not entitled to be paid for public holidays unless they work on the public holiday.
- 10. Notice of termination and redundancy pay** – up to 4 weeks’ notice of termination (5 weeks if the worker is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on continuous length of service. This NES will not apply if you are a casual employee.
- 11. Each employee must be given a Fair Work Information Statement**
Each employee must be given a Fair Work Information Statement – employers must provide this statement to all new workers. It contains information about the NES, Awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business, and the roles of the FWC and FWO.

Case Study

Sarah’s little girl Esther was 18 months old when Sarah went to work for a company. Everything was going really well with her work schedule – Sarah’s mum and dad were able to look after Esther when she went to work. Sarah usually worked from 12.00pm to 4.00pm, Monday to Friday.

Sarah’s parents moved away when Sarah’s dad started another job. Sarah had tried to find childcare for Esther but was only able to get Esther into childcare in the mornings from 9.00am to 1.00pm.

Because her employer agreed, Sarah was able to negotiate a change of start and finish time to fit in with Esther’s childcare times. The negotiations took place because of the NES about flexible work arrangements.

Is it ok to be paid cash in hand?



It is okay for you to be paid cash in hand – but, even if that is the way you are paid, your employer must give you a payslip.

Always get a payslip. Sometimes, employers who pay cash without giving you a payslip are not following the law – not paying your tax to the Taxation Office and not paying your superannuation.

Also, it can be really hard to show that you are working for an employer without a paper trail – so, ask your employer for a payslip!

If you can't get a payslip, call the FWO for help. If you are worried about your employer finding out, you can ask the FWO to keep your identity a secret.

Case Study

James and Samuel had been on the adoption waiting list for their baby for a few years. They found out only a short time before they were going to be parents that their baby was available to adopt. After talking about it, they decided that James would take 12 months off work to look after their baby.

James spoke to his employer – who was not sure if parental leave was available in “cases like theirs”.

James and Samuel spoke to the FWO – James was entitled to take 12 months leave under the NES. James is now enjoying his time looking after baby Will.



How do I get my correct entitlements?

If you are not getting your correct entitlements, there are several different ways that you can go about claiming what you are entitled to:

- Make a complaint to the FWO; or
- Make a claim in a court; or
- If you are a member of a Union, you can get help from your Union.

Fair Work Ombudsman (FWO)

The FWO can sometimes help resolve disputes between employers and employees about entitlements. The first step is to register for an online account at www.fairwork.gov.au. From here you can make an online enquiry about your issue. Once your enquiry is received by the FWO, an investigator should contact you to discuss the issue within 10 working days.

If you are unsure if the FWO will investigate your issue, or your issue is complex, ring their Infoline first on 13 13 94. During an investigation, you may be asked lots of questions and asked to hand over all of the documents you have. Your employer may also be questioned and required to provide documents to the FWO. FWO investigations can lead to many different results, including employers being issued with letters of caution, compliance notices or penalty infringement notices.

Sometimes the FWO may take legal action in the courts against an employer. The FWO does not take legal action for workers in all underpayment matters.

The FWO might also recommend that you start legal action to recover your entitlements from your employer. You might want to get your investigation report and calculations from the FWO – you can ask for a copy of these by sending a letter to the FWO.

Working for board and lodging?



If you are working as an employee you should be paid in full and in money for the work that you do.

It can sometimes be okay for an employer to give you board and lodging as part of your pay, as long as there is a written agreement and the board or lodging is mainly for your benefit. If you are in this situation, you are covered by residential tenancy laws as well as employment laws.

But be careful, working long hours for board and lodging can be exploitation.

Going to court

At any time during the FWO investigation of your issue, you can take your own legal action to recover wages or entitlements owed to you (it is important to remember that this might stop the FWO investigation process – so talk it over with the investigator before you do anything).

There is an important time limit for court claims: **You only have 6 years from the date that the amount became due and payable to you to claim in a court for unpaid entitlements.**

If you do not take action in a court to recover the unpaid wages or entitlements during that time, you will lose the right to claim entirely.

Which court?

If you live and work in NSW, it is possible to make a claim for unpaid entitlements in four different courts:

1. **The Federal Circuit and Family Court of Australia (FCFCOA) and the Federal Court.** These courts deal with claims for unpaid wages and entitlements for any worker covered by the *Fair Work Act* (usually any worker under an Award or EA, but not state public servants or local government employees)

2. **The Chief Industrial Magistrates Court (CIM).** This is a specialist local court dealing with employment issues in NSW. It can deal with claims for unpaid wages or entitlements.
3. **The Local Court.** The Local Court is exactly what it sounds like – the Magistrates Court in your local area. The Local Court can handle claims for unpaid wages or entitlements up to \$100,000.00
4. **The District Court.** This is a court, which handles claims between \$100,001.00 and \$750,000.00. It is unusual for a claim about unpaid wages or entitlements to be commenced in the District Court.

If your claim is up to \$20,000.00, then you can claim in either the CIM, Local Court or in the FCFCOA under the ‘small claims’ procedures in those courts. These procedures are less formal– see Getting help.

As each court is different, you should get legal advice before making a claim in the courts - see Getting help.

Case Study

Ethan had been working in Aged Care for 10 years. 8 years ago, he started doing a different job (with more responsibility) and working on weekends and public holidays. His employer did not increase his pay rate even though what he was doing required a higher rate of pay under the Award. Also, the employer did not pay weekend rates he was entitled to under his Award.

Because of the time limit, Ethan was only able to claim the difference between what he had been paid and what he should have been paid for the last 6 years, not the last 8 years. He lost out on being able to claim several thousand dollars because he has not taken legal action in time.



I have a problem.

What do I do?

Gather information

If you are going to make a complaint to the FWO or make a court claim, you will need as many of the following documents as you can find:

- The job advertisement;
- Your letter of appointment;
- Your written contract of employment and any duties statement;
- Your pay slips provided by your employer;
- Any group certificate(s) or annual payment statement(s) showing your income for the year and any tax paid;
- Any other letters or emails from your employer, for example, about pay rises, promotions, or super;
- Any diary notes listing hours that you worked and breaks taken.

You should also download the FWO's phone application 'Record My Hours'. With this app you can record the time you spend at your workplace. GPS technology tracks when you arrive at work and when you leave. The app is a great way to protect yourself from wage underpayment and can help with a complaint.

If you are no longer working for your employer (and you have them) you will also need:

- Your employment separation certificate (you can also get a copy from Centrelink if you do not have it);
- A copy of your letter of resignation or dismissal;
- Any reference or statement of service your employer gave to you.

Write a letter to your employer

This is often called a letter of demand. It will help you work out your claim and notify your employer of the amount you say you are owed. If you don't get a response or payment, then get some legal advice. You could also complain to the FWO or start action in a court.

Some employers may try to get you to sign a letter or a document to resolve the dispute – don't sign anything until you have it checked by a lawyer. You might be bargaining away more than you think. If you are thinking of signing this type of document, get some help – see Getting help.



Case Study

Isabella had been working for Big Company Pty Ltd for 6 months. She was told by her friend Joe, who was working at another company doing the same job as Isabella, that he was being paid \$2.00 more an hour than what she was.

Confused, she rang FWO. The FWO confirmed that the award rate for Isabella's job was \$2.00 per hour higher than she was being paid. Isabella brought this

to her employer's attention with the letter of demand set out on the next page.

Her employer, after checking their records and talking with the FWO, paid the net amount underpaid to Isabella. Her employer also sent the tax payable to the ATO and paid the extra superannuation to her nominated super fund.

Sample letter of demand

1 July 2012
Big Company Pty Ltd
1 Robbins Street
Prettyville NSW 2912

Dear Sir/Madam,

Re: PAYMENT OF WAGES/ENTITLEMENTS

I have been employed with your organisation as a clerical assistant since 1 February 2012. I am employed on a full time basis. I understand that I was employed under the Clerks - Private Sector Award 2010.

I believe that an additional amount is owed to me for work performed by me. My calculation of the outstanding amount is as follows:

Entitlement	Calculation	Amount Owed
Underpayment of Wages for the period 1 January 2012 to 30 June 2012	No. of hours: 912 x \$2.00 per hour	\$1,824.00

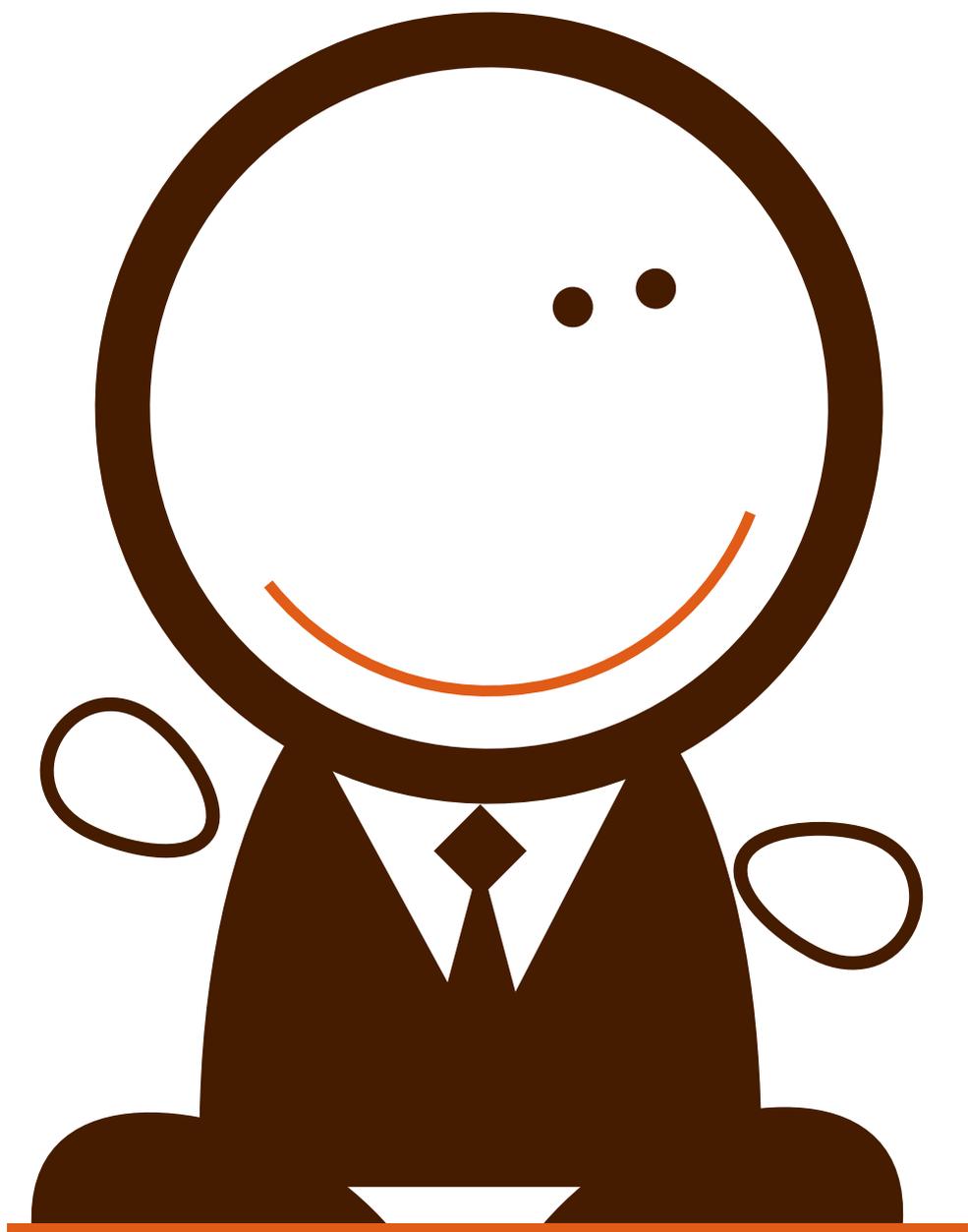
As this payment is an underpayment of wages for my usual working hours, please also pay \$164.16 to my nominated superannuation fund.

Please pay the outstanding amount within 14 days of the date of this letter. If I do not receive a response from you within this time, I may lodge a complaint with the Fair Work Ombudsman or take other legal action.

This letter provides an opportunity for you to correct these outstanding issues. If you wish to discuss this matter further, please contact me on my email address: hotfrog@spunky.com.au

Yours sincerely,

Isabella Greene



Discrimination or unfair treatment at work

Have you been discriminated against because of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin?

Or, have you been treated unfairly or dismissed because:

- You asked about your workplace rights or complained to your employer;
- You took sick leave and provided a medical certificate;
- You complained about safety or made a worker's compensation claim;
- You are involved in union activities;
- Your employer wants to make you an independent contractor.

If any of the above things has happened to you then your employer may have breached the 'General Protections' in the *Fair Work Act*. You may have a right to compensation. You should get legal advice quickly – see [Getting help](#).

If any of the above things have happened to you, and you have been dismissed, then you only have 21 days to make a claim with the FWC. If you don't lodge your claim within 21 days from the date of your dismissal, then you will lose your right to claim. If you can't see a lawyer in time, then think about lodging a claim yourself. Contact the FWC to get information about how to make a claim.

If the discrimination or unfairness caused you some serious problems (other than dismissal) then you have 6 years to make a claim with the FWC or the courts - but don't wait too long, see a lawyer quickly.

Serious problems include:

- Cutting your pay;
- Reducing your hours;
- Bullying and harassing you.

Another option is to make a discrimination complaint to the Australian Human Rights Commission (AHRC) or the NSW Anti-Discrimination NSW (ADNSW). You must complain to the AHRC within 6 months of the discrimination taking place or to the ADNSW within 12 months of the discrimination taking place.

Do you think you have been unfairly dismissed?



Your employer must have a valid reason for dismissing you. If you think that your dismissal was unfair, you can lodge a claim with the FWC. If the FWC decides that your dismissal was unfair it can order your employer to reinstate you or pay you.

Again, you have only 21 days from the date of your dismissal to lodge an unfair dismissal claim with the FWC – so see a lawyer quickly or make a claim yourself with the FWC.



How can I check if my employer has paid my superannuation?

If you are an employee aged 18 years or over, your employer must pay superannuation (super) for you, regardless of how much you earn. It does not matter whether you work full time, part time or as a casual. Prior to 1 July 2022, your employer only had to pay you super if you earned over \$450 per month (before tax).

If you are under 18 years old, you must work at least 30 hours per week to be entitled to super.

Contractors may also be entitled to super if they are paid mainly for their personal labour and skills.

Since 1 July 2023, the minimum super an employer must pay is 11% of each eligible worker's ordinary time earnings' – basically, 11% of the amount you earn for your ordinary hours of work. The contribution rate may continue to rise over the coming years.

Your employer must keep records that show:

- The amount of super paid for you and how it was calculated
- The date that super contributions were made to your fund
- The choice of super fund you have made (if you chose a particular fund)

Your payslip must record the super amounts contributed for you.

What if I have a problem?

If you are worried that your employer is not paying your super, or is not paying as much super as you are entitled to, then you can take the following steps:

Step 1

Contact your employer and ask:

- How often is super being paid for you?
- Into which fund is your super being paid?
- How much super is your employer paying?

Step 2

Check your most recent member statement from your super fund. This statement shows how much super your employer has contributed to your fund in the last financial year. You can also contact your super fund for more up-to-date information. You can usually log on to your super fund website to get an up-to-date statement of your super.

Step 3

If you still believe that your employer is not paying enough super, or any super, or is not paying your super into your chosen fund, lodge an enquiry with the Australian Taxation Office (ATO) about unpaid super by:

- Using the online Employee Superannuation Guarantee (SG) calculator;
- Lodging an enquiry online at www.ato.gov.au/unpaidsuper; or
- Phoning the ATO on 13 10 20.

The ATO will ask for:

- Your contact details and whether you give permission for the ATO to use your name when contacting your employer;
- Your employer's contact details (including business address);
- Your employer's ABN (this should be on your last pay slip or on your employer's business letterhead);
- Whether you are employed full time, part time or casual, and when you started employment with your employer;
- When the payment problem started and ended, including the month and year.

You will also need to confirm with the ATO that you:

- Were paid at least \$450 pay (before tax) in a month for any period you worked prior to 1 July 2022 – the online calculator tool asks you to enter total wages per quarter;
- Checked with your employer and super fund if any super has been paid - the online calculator asks for the amount paid to the super fund each quarter (the ATO may also need your super fund name and membership number);

- Were offered a choice of super fund (your employer should have given you a form for this – if so, the ATO will need the date the form was given to you);
- Checked if your super had been paid to your chosen fund.

The ATO will ask for your identity information including your:

- Tax File Number;
- Address;
- Bank account details;
- Date of birth;
- Details from an ATO-generated notice;
- The amount of your last refund or payment.

At any time during the ATO complaints process, you can take your own legal action to recover unpaid super owed to you (this might stop the ATO complaints process – so talk it over with the ATO before you do anything).

Case Study

Liam had been employed as an apprentice butcher in a small business. He thought everything was fine, and then he got his end of year statement from his superannuation fund.

He spoke to his boss, who wouldn't answer his questions.

Liam rang the ATO hotline for help. The ATO told him that he was entitled to be paid

superannuation, and that there should have been \$3150.00 in contributions to Liam's super fund during the financial year.

The ATO took steps to ensure that Liam's superannuation was paid. This involved the ATO contacting Liam's employer.



If my employer is insolvent or bankrupt and I have entitlements owing to me, where can I get help?

It is a real problem if your employer is insolvent. Insolvent means that your employer cannot pay debts and may mean that your employer is placed in liquidation or becomes bankrupt. You might not be paid for long service leave or holiday pay that you have worked for. You could also lose your job.

The Fair Entitlements Guarantee (FEG) is a safety net scheme set up to pay some outstanding employee entitlements that might not be paid because of the liquidation or bankruptcy.

Are you eligible?

To get assistance from FEG, you must be employed by an employer who has entered into liquidation or bankruptcy.

You are not usually eligible for FEG assistance if you are an 'excluded employee' (including company directors and their relatives), contractor, subcontractor, or owed money by the employer for any reason other than for eligible worker entitlements. Temporary residents (other than special category visa holders of Australia) are not entitled to FEG.

What can FEG help with?

FEG can help with:

- Up to 13 weeks of unpaid wages;
- Unpaid annual leave;
- Unpaid long service leave;
- Unpaid amounts in lieu of notice up to a maximum of 5 weeks' pay; and
- Unpaid redundancy pay up to a maximum of 4 weeks per completed year of service (and pro rata for less than a full years' service).

In calculating all entitlements under FEG, a maximum rate wage is used. If you earn more than this rate, then FEG assistance will be calculated as if you earned only the maximum wage. The maximum wage is indexed every financial year. You can find out the current FEG maximum wage at www.dewr.gov.au/fair-entitlements-guarantee.

FEG won't pay superannuation. But if there are sufficient assets to pay employees, then the Liquidator or Trustee in Bankruptcy must pay your superannuation.

If you need help recovering entitlements under the FEG scheme, contact the FEG Hotline on 1300 135 040 or go to the website on www.dewr.gov.au/fair-entitlements-guarantee.

Case Study

Mia had been working for Little Company Pty Ltd for 4 years. Suddenly, everything changed at work, and the company was placed in the hands of a liquidator. The liquidator had a meeting with Mia and explained that the company's financial position was very bad, and that there was no money to pay Mia for her owed wages or to pay her annual leave. In fact, the company's business was going to close down.

Mia contacted the FEG. They were able to contact the liquidator, and once they had confirmed the financial position of the company, were able to help Mia by paying her unpaid wages, unpaid annual leave, pay in lieu of notice, and redundancy pay.





Getting help

If you are confused, have more questions, or need help about other employment problems, then get advice in these ways:

- **The Fair Work Ombudsman Info Line** can give information about employee entitlements and other work matters: **13 13 94**

The Fair Work Ombudsman can help with complaints by employees about:

- Under payment of wages or entitlements;
 - Non payment of wages or entitlements;
 - Some other work place problems.
- **The Fair Work Commission (FWC)** is the national workplace relations tribunal. The FWC can conciliate and determine some workplace disputes – such as unfair dismissal matters. Call **02 8374 6666** or visit www.fwc.gov.au.
 - If you are a member of a union, your union can assist and advise you. For more information visit **Unions Australia** at www.australianunions.org.au/ or Unions NSW at www.unionsnsw.org.au.
 - **LawAccess NSW** is a free information service run by Legal Aid NSW. Click on the Chat with us button at www.legalaid.nsw.gov.au or call **1300 888 529** between 9am to 5pm, Monday to Friday (excluding public holidays).
 - **Community legal centres** can give advice and assistance with employment law matters. Information about Community Legal Centres, and where you can find your local Community Legal Centre, can be found at Community Legal Centres NSW website: www.clcnsw.org.au.
 - **Legal Aid NSW** helps people with their legal problems. Our legal services include legal advice, help at court and family dispute resolution. We can help in most areas of criminal law, family law and civil law. We can provide some advice about employment law matters. You can find out more at www.legalaid.nsw.gov.au.

