

# Wage theft frequently asked questions

## For workers

### What are my rights?

As a worker in Queensland your rights and entitlements are protected by State and Commonwealth laws. You are entitled to:

- be paid at least the minimum wage that applies and other entitlements under the [National Employment Standards \(NES\)](#) or other (higher) minimum rate under a modern award or enterprise agreement that applies to your work.
- not have money deducted from your wages unless it is an approved lawful deduction (very limited circumstances – contact the [Fair Work Ombudsman](#) for information including a pay calculator for minimum pay rates, penalties and allowances under an award)
- have all your hours recorded and receive an accurate pay slip each time you are paid
- not be directed as to how you spend your wages
- be paid for training and staff meetings
- not be required to hand back money to your employer after you have been paid
- have [superannuation contributions](#) paid to a complying fund on your behalf if you are eligible. Generally, your employer must pay superannuation for you if you are:
  - 18 years old or over, and are paid \$450 or more (before tax) in a calendar month.
  - under 18 years old, being paid \$450 or more (before tax) in a calendar month and work more than 30 hours in a week.
- have Pay-As-You-Go (PAYG) tax deducted from your gross (before tax) pay by your employer and paid to the Australian Taxation Office (ATO)
- a [safe workplace](#)
- [reasonable hours, rest breaks and time off work](#)
- be treated [fairly and with respect and free from discrimination](#)
- be a member of a [union](#) if you want to.

### How can I find out how much I should be paid?

Visit or call the [Fair Work Ombudsman](#) on 13 13 94 for advice on pay and dispute resolution.

### How can I report wage theft?

Anyone in the community can report allegations of wage theft or alert the [Fair Work Ombudsman](#) of non-compliance.

Call the [Fair Work Ombudsman](#) on 13 13 94 or make an anonymous complaint.

You can also seek assistance from your [union](#).

### **What if I believe I am not being paid the correct amount?**

The Fair Work Ombudsman may be able to investigate on your behalf if you make a complaint, or assist you to raise the matter with your employer.

In many cases, employers will indicate they were not aware they were paying workers incorrectly until the matter was raised with them, and they often act quickly to rectify the matter.

### **What if I need to take more formal action against my employer to get paid?**

If informal measures have been unsuccessful, you may wish to seek legal advice about making a wage recovery claim against your employer in court.

There are different avenues for this, including Federal Circuit Court and employment claims in the Magistrates Court in Queensland. Contact the Fair Work Infoline for information, and/or a legal service such as a community legal centre in your area or Legal Aid for advice about your specific circumstances.

If you are a member of a [union](#), you should speak to your union about how they might be able to assist you with recovery of your wages.

### **Do I need a lawyer to make an employment claim against my employer?**

You do not need to be represented by a lawyer if you wish to pursue an employment claim in the Magistrates Court. Employment claims are intended to be a simple, low-cost wage recovery process. However, you may wish to seek legal advice for example from a community legal centre, or advice from your union.

If you make an employment claim in the Magistrates Court, your claim will be referred for a compulsory conciliation hearing in the first instance.

More information on how to make an employment claim can be found here: [Magistrates Court Employment claims](#), [Fair Work Ombudsman information and guide](#).

### **Is there a time limit to take wage recovery action?**

Yes, there is a statutory time limit (usually six years from when the entitlement was due to be paid).

### **My employer has not made superannuation contributions. What can I do?**

The Australian Taxation Office (ATO) can help employees and employers understand their rights and responsibilities in relation to PAYG tax and superannuation contributions required under the super guarantee. The [ATO can assist employees](#) to make a claim for unpaid superannuation.

The ATO also deals with tax avoidance and illegal 'phoenix' activity (where a company director winds up one company and starts a new one to avoid paying liabilities). For further information or assistance about illegal phoenix activity visit the [Australian Tax Office](#) website or phone: for individuals 13 28 65, for business 13 72 26.

### **Is it legal to pay me in product?**

It is not legal to be paid in product. Employers are required to pay you money for your work.

Payment can be in the form of electronic bank transfer, cash, cheque, money order, postal order or a combination of these methods. Payment must be at least monthly, unless your relevant award or enterprise agreement sets out when you are required to be paid i.e. weekly, fortnightly or monthly.

### **Is it legal to be paid in cash?**

Where payments are made in cash only or the employer offers the job on the basis that you will only be paid in cash and no tax is taken out or superannuation paid on your behalf, this can be an indicator of non-compliance, particularly if pay slips are not provided and proper records not kept.

Contact the Fair Work Ombudsman or your union if you are paid in cash only and are concerned that you are not receiving your correct entitlements.

### **Can my employer tell me I can't have a break when I have worked all day?**

Your employer is required to comply with the provisions of the relevant Award, enterprise agreements and other registered agreements, including the maximum hours of work rest breaks. To find out how these apply in your Award or Agreement specific to your industry visit the [Fair Work Ombudsman](#).

Under work health and safety legislation, employers have a duty of care to provide a healthy and safe workplace, including providing adequate rest breaks to manage the risk of fatigue.

### **I answered an ad in the paper and I was told that I had a job, but my boss now wants me to apply for an Australian Business Number (ABN) and says I am a contractor, not an employee. What is the difference?**

Broadly speaking, an independent contractor runs their own business (which is why they require an ABN). There are some businesses which engage workers on ABNs where those workers should be employees to deliberately disguise an employment relationship. This is known as 'sham contracting'. Businesses might do this to try to avoid their responsibilities under the *Fair Work Act 2009 (Cth)* including not paying award rates, leave and other entitlements, as well as superannuation obligations.

What makes an individual an independent contractor or an employee at law is complex and involves tests applied to features of the employment relationship, including the degree of direction and control over how the work is done, hours of work, the expectation of ongoing work etc.

If you have been asked to get an ABN but the arrangement otherwise looks like employment, it may be 'sham contracting' and you may be being significantly underpaid compared to what you should receive under an Award. Additionally, you may be disadvantaged in other ways, such as by being made responsible for your own superannuation and tax deductions when your employer should be responsible for these.

For further information visit or call the [Fair Work Ombudsman](#) on 13 13 94, or contact the [Australian Taxation Office](#).

### **We have staff meetings for an hour every week. Should I be paid to attend?**

Yes, you should be paid to attend a staff meeting if you are required to attend. Your employer must pay you for all the time you are required to work, including attending meetings and training for work.

### **Can a prospective employer ask me to do unpaid work?**

Unpaid work or internships may not be lawful unless it is genuine work experience arranged through an educational institution. For further information on unpaid work including examples visit [fairwork.qld.gov.au](http://fairwork.qld.gov.au) .

### **Where can I go if I need assistance or further information:**

A number of other organisations can also give workers advice about rights and entitlements and provide other assistance. These include:

- Unions – for help finding which union covers the work you do, you can go to [australianunions.org.au](http://australianunions.org.au) or call 1300 486 466.
- Working Women Queensland [wwq.org.au](http://wwq.org.au)
- Young Workers' Hub [ywhub.org.au](http://ywhub.org.au)
- JobWatch [jobwatch.org.au](http://jobwatch.org.au)
- Legal Aid Queensland [legalaid.qld.gov.au](http://legalaid.qld.gov.au)
- Community Legal Centres Queensland [communitylegalqld.org.au](http://communitylegalqld.org.au)
- If you are a student your school or college may be able to help with advice.

## **Information for employers**

### **What are my obligations?**

As an employer, you are required to comply with your obligations under the *Fair Work Act 2009* (Cth) and the relevant industrial instrument such as the Modern Award or enterprise agreement, including:

- paying your workers correctly including hourly rate, overtime, allowances etc
- making superannuation contributions
- making and keeping employee [time and wages records](#) for seven years
- providing pay slips.

Resources are available on the Fair Work Ombudsman website including information about [rights and obligations](#) and resources for [small businesses](#).

From 1 July 2018 large employers (20 or more employees) also need to use [Single Touch Payroll \(STP\)](#) for reporting tax and super information to the ATO. For small employers with 19 or less employees, you will need to report through STP from 1 July 2019. The ATO is providing flexible options.

### **I realise I have underpaid my employee in error. How can I fix this?**

Visit the [Fair Work Ombudsman](#) for guidance. If there are arrears owing for a long period of time, you may be able to work out a payment schedule with the assistance of the Fair Work Ombudsman (for wages) or the [Australian Taxation Office](#) (for superannuation).

**If my employee has agreed to work for a flat hourly rate why can't I pay them the flat rate?**

An employee cannot agree to be underpaid and this is not a defence for underpaying a worker. The *Fair Work Act 2009* (Cth) and relevant industrial instruments such as an Award, enterprise agreement or other registered agreement set the minimum workplace entitlements and working conditions including hourly rate, overtime, penalty rates and allowances etc.

**Is there a time limit for an employee or former employee to take wage recovery action?**

Yes, there is a statutory time limit to recover wages (usually six years from when the entitlement was due to be paid).

**I want to hire someone and need to ensure they are suitable for the job. Do I have to pay them if I want them to do a work trial?**

It may be appropriate for you to assess the suitability of a potential employee by asking them to demonstrate a required skill as part of the recruitment process, but any work must be paid.

For further information on unpaid work trials visit [fairwork.gov.au](http://fairwork.gov.au)

**Where can I go if I need assistance or further information?**

For employers, all regulators provide information tailored for businesses and industries.

The Queensland Government Business Portal [business.qld.gov.au](http://business.qld.gov.au) has resources available for businesses.

There are also employer organisations and associations such as industry peak bodies and Chambers of Commerce and Industry which may be able to provide information and assistance, on an ad hoc or membership basis, as well as industrial and employee relations specialist businesses and consultants.