

How to recover unpaid wages: international students

This factsheet is about what you can do if you have been underpaid at work to recover your wages.

What is an underpayment?

If you are:

- not receiving your correct pay or not being paid at all,
- not being paid more for working late into the night or during weekends (commonly known as penalty rates), or
- not being paid your entitlements such as annual leave, sick leave, or long service leave,

you may have been underpaid and are legally entitled to recover what you are owed.

How to recover your unpaid wages and entitlements

- **Step 1.** Work out how much you are owed
- **Step 2.** Raise the issue with your employer
- **Step 3.** Write a letter of demand
- **Step 4.** Make a complaint to the Fair Work Ombudsman
- **Step 5.** Make a claim in court.

Step 1: Work out how much you are owed

A. Work out your correct pay rate

Look at your employment contract or the applicable Award, if you are covered by one. An Award outlines the correct pay rates for the type of work you do.

To help you work out your Award and base pay rate, you can consult the Fair Work Ombudsman (FWO) at www.fairwork.gov.au or call 131394.

B. Review your payments

Look at the payments you have actually received from your employer, by checking your payslips, group certificate, and bank statements. Also look at whether you were paid for all of the hours you worked.

C. Calculate the difference

Calculate the difference between the amount you should have been paid according to your correct pay rate and the hours you worked, and the amount you were actually paid.

This difference is the sum you are owed as an underpayment.

For a sample underpayment calculation, you can refer to the FWO's [Small Claims Guide](#).

If you find it too hard to work out your underpayment, you can seek legal advice.

Step 2: Raise the issue with your employer

Talk with your employer regarding the underpayment and ask them to pay you what they owe you. Underpayments can sometimes be because of administrative errors. Your employer may not have intentionally underpaid you - it could be an honest mistake. In such cases, a discussion with your employer may result in you being paid the money you are owed.

If you talk with your employer, take detailed notes. After you've spoken to your employer, make a note of what was discussed and said - include the date of the discussion, the name of the person you spoke to, and a summary of what was said.

If your attempt to resolve the matter directly with your employer is unsuccessful, you may need to proceed to Step 3.

Step 3: Write a formal letter of demand

Write a letter of demand to your employer outlining the exact amount you are owed and providing a breakdown of the calculation.

Request that your employer pay the outstanding sum within a reasonable time, eg. within 14 days. It is important to communicate the steps you will take if the payment is not made within the timeframe given. You can find a template letter of demand in the Fair Work Ombudsman's Small Claims Guide.

Step 4: Lodge a formal complaint with the Fair Work Ombudsman

If your employer does pay you the amount you are owed, you can seek assistance from the Fair Work Ombudsman (FWO). You can start this process by visiting this link: <https://bit.ly/fwo-how-we-help>.

The FWO may appoint a workplace inspector to investigate your complaint and guide you through the formal complaint procedure. However, the FWO does not investigate all complaints.

Step 5: Make a claim in court

If all else fails, you have the option to start legal proceedings to recover the money owed to you. Both the Federal Circuit Court of Australia and the Local Court of New South Wales have a small claims procedure for the recovery of unpaid wages.

Federal Circuit Court and Federal Court

If the amount you are seeking to recover is an entitlement specified in an Award or under the *Fair Work Act 2009* (Cth) and is less than \$20,000, you can make a claim in the Small Claims Division of the Federal Circuit Court. The Fair Work Ombudsman's Small Claims Guide contains information about submitting an application.

For claims that are more than \$20,000, the small claims procedure is not applicable. In such cases, you can file an application in the General Division of the Federal Circuit Court or Federal Court of Australia. These claims can be more complex to run, and the filing fee is higher than the Small Claims Division.

In both the Small Claims Division and the General Division, each party usually pays their own legal costs. The court will only order you to pay the legal costs of the other party if you lose the case and there are *exceptional circumstances* justifying a costs order.

NSW Local Court and other state courts

If the sum you are claiming is an entitlement based solely on a contract and is less than \$20,000, you can file a small claim in the NSW Local Court. If you lose, you will likely be ordered to pay the costs of the other party, but there are limitations on the costs that can be imposed upon you. You can find more information at NSW Local Court's Website:
<http://www.localcourt.justice.nsw.gov.au>

If the sum you are claiming is an entitlement based solely on a contract and is more than \$20,000, you can file a claim in the General Division of the Local Court (for claims up to \$100,000) or the District or Supreme Courts for larger amounts.

If your claim is unsuccessful, you will likely be ordered to pay your employer's legal costs, which could be substantial. You should seek legal advice before commencing this type of claim.

Time limits

You have 6 years to bring your unpaid wages claim against your employer from the date you were underpaid.

Legal Advice

You can obtain information, advice and assistance from:

- Redfern Legal Centre
www.rlc.org.au/contact
9698 7277
- LawAccess NSW
www.lawaccess.nsw.gov.au
1300 888 528
- Fair Work Ombudsman:
www.fairwork.gov.au/contact-us 13
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If you need an interpreter, call 131 450

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This factsheet is not a substitute for legal advice.