

# UNDERPAID at work



If you are having difficulty working out your underpayment, get legal advice.

## **Step 2: Raise the issue with your employer**

Speak with your employer about the underpayment and ask for the problem to be sorted out. Your employer may have not underpaid you on purpose; they may have made a genuine mistake. In this situation, talking to your employer may be enough to resolve the problem.

**Take notes!** It is a good idea to make a note of any discussions that you have with your employer about underpayment, including the date, the name of the person you spoke to, and what was said. If speaking to your employer doesn't work, you may need to consider Step 3.



## **Step 3: Write a letter of demand**

Write a 'letter of demand' to your employer setting out the amount you are owed and how that was calculated. Ask your employer to pay you the amount owing within a reasonable period of time (usually 14 days), and let your employer know the steps that you may take if the payment is not made (see below). A template letter of demand is available in the FWO's Small Claims Guide.

*The FWO's Small Claims Guide has sample underpayment calculations, letters of demand and tips to help you file claims at court:  
<https://bit.ly/fwo-small-claims>.*

This factsheet looks at what you can do if you are being underpaid at work. If you are:

- not being paid properly or not being paid at all,
- not being paid for working late at night or on weekends (penalty rates), or
- not being paid for entitlements such as annual leave, sick leave, long service leave or redundancy pay,

you may have the legal right to recover what you are owed.

## **What you need to do**

- Step 1.** Work out exactly 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; and/or
- Step 5.** Make a claim at court

## **Step 1: Work out exactly how much you are owed**

(a) What is your correct rate of pay? You can do this by checking your employment contract or the relevant Award. If you are covered by an Award, it will set out your minimum pay. The Fair Work Ombudsman (**FWO**) can help you check your Award and your correct base rate of pay at [www.fairwork.gov.au](http://www.fairwork.gov.au)

(b) How much have you been paid? You can do this by checking your payslips, group certificate and bank statements.

(c) The difference between how much you should have been paid, and the amount you were paid is the amount that you are owed.

#### **Step 4: Make a complaint to the Fair Work Ombudsman**

If your employer refuses to pay the amount you are owed, you can ask the FWO for help: <https://bit.ly/fwo-how-we-help>. The FWO may assign a workplace inspector to investigate your complaint, and help you work through the complaints process.



#### **Step 5: Make a claim in court**

You can also apply to a court to recover your money. If your claim is for \$100,000 or less and involves a breach of:

- a minimum entitlement under the National Employment Standards,
- an entitlement under an Award;
- an enterprise agreement;
- the national minimum wage order; or
- an order of the Fair Work Commission.

You can use the small claims process at the Federal Circuit and Family Court of Australia (**FCFCA**) or the Local Court of NSW to seek underpayments using a relatively informal and quick process. You do not need a lawyer to bring an underpayment claim against your employer but it can help to get advice first.

**General Division:** If you are claiming more than \$100,000 or want to claim penalties, you can bring a general application to the FCFCA. The process for bringing a general division claim can be more complex and the filing fee is more expensive than the fee in the small claims division. In the general division, your employer can be ordered to pay a penalty directly to you for doing the wrong thing.

For claims brought under the Fair Work Act 2009 (Cth), if your claim is unsuccessful, the court will only order you to pay your employer's legal costs in exceptional cases.

#### **NSW Local Court and other State Courts:**

You can also start a case in the Chief Industrial Magistrates Court or the Local Court of NSW for a breach of an employment contract. If your claim is unsuccessful, you may be ordered to pay your employer's legal costs. In the local court there are limits on the amount of costs that can be awarded against you

### **IMPORTANT**

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

#### **Where can I get legal advice?**

The information contained in this fact sheet is general information only. It is not a substitute for getting legal advice about your individual situation. If you want to take action to recover an underpayment, we recommend that you get legal advice, by contacting:

- the [Employment Rights Legal Service](#) on 02 80043270 or online at [erls.org.au](https://erls.org.au)

We help migrant workers and international students and can arrange an interpreter to assist

- LegalAid NSW to find your local CLC. Go to [legaid.nsw.gov.au](https://legaid.nsw.gov.au) or call 1300 888 528

Published: 20 November 2023  
by the Employment Rights Legal Service