

# Factsheet No. 3

## What you can do if you are being underpaid at work



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

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If you are:

- **not being paid** for work performed (unpaid wages); OR
- **being paid less** than the legal requirement (underpayment of wages); OR
- **not being paid for entitlements** such as annual leave, sick leave, long service leave or redundancy pay (unpaid or underpayment of entitlements);

you have a legal right to recover what you are owed.

**IMPORTANT:** You have **6 years** from the date you should have been paid (or paid in full) to take action.

### What You Need To Do

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

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There are several steps involved in working out

how much you are owed. They are:

- a. Work out your correct rate of pay. You can do this by:
  - i. Checking your contract of employment, and
  - ii. Checking the minimum amount that you should be paid under your Award. If you do not know which Award covers your employment – or are having difficulty identifying your minimum rate of pay under that Award, you can call the Fair Work Ombudsman for assistance on 13 13 94 or look at the Fair Work Ombudsman’s website, at [www.fairwork.gov.au](http://www.fairwork.gov.au). The Fair Work Ombudsman’s website has a tool called the Pay and Conditions Tool (PACT), which is designed to help you figure out your correct rate of pay. PACT can be accessed here <http://calculate.fairwork.gov.au/findyouraward>
- b. Work out how much you have actually been paid. You can do this by:
  - i. Checking your payslips;
  - ii. Checking your group certificate and
  - iii. Checking your bank statements.
- c. Work out the difference between the amount that you should have been paid, and the amount that you were paid. The difference will be the amount that you are

owed as an underpayment.

It is important to know exactly how much you believe that you have been underpaid before you take further action. You can find a sample underpayment calculation in the Fair Work Ombudsman's Small Claims Guide at: [www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx). If you are having difficulty working out your underpayment, you may wish to seek legal advice. You can also contact your union if you are a member. Contacts for legal advice are at the end of this fact sheet.

**My employer hasn't given me any payslips. What can I do?**

Under the Fair Work Act 2009 (Cth), your employer has an obligation to give you pay slips either in a paper or an electronic format, within one day of paying you (Fair Work Act s 536).

If your employer has not complied with its legal obligation to give you payslips, you can make a complaint about this to the Fair Work Ombudsman.

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

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Speak with your employer about the underpayment and ask for the problem to be sorted out. Often, an underpayment is the result of an administrative error. Your employer may have not intended to underpay you... they may have made a genuine mistake. In this situation, talking to your employer will often be enough to resolve the problem.

It is a good idea to make a note about any discussions that you have with your employer about underpayment, including the date on which you spoke about the issue, 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**

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If you cannot resolve the issue with your employer through discussions, write a letter of demand to your employer setting out the amount you are owed and how it is calculated. Ask that your employer pay you the amount owing within a reasonable period of time (usually fourteen days), and let your employer know the steps that you will take if the payment is not made.

These steps are explained below, at Step 4 and Step 5.

You can find a template for a letter of demand in the Fair Work Ombudsman's Small Claims Guide at:

[www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx)

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

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If your employer refuses to pay the amount you are owed, you can make a complaint to the Fair Work Ombudsman (**FWO**). The FWO complaint form can be found here:

<http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/help-resolving-workplace-issues>

The FWO will assign a workplace inspector to investigate your complaint, and help you work through the complaints process. The FWO may arrange a mediation between you and your employer, to help resolve the issues.

If the issue remains unresolved, you can consider Step 5.

### **Step 5: Make a small claim**

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The Federal Circuit Court of Australia and the Local Court of New South Wales both have a procedure called a “small claims procedure” to help people recover money owed to them, including wages and entitlements owed. The small claims procedure is a relatively informal and quick process to recover monies owed.

If the amount that you are claiming is an entitlement under an Award or under the Fair Work Act 2009 (Cth), and it is less than \$20,000, you may be able to recover the amount owing by bringing a small claim in the Federal Circuit Court of Australia. The Fair Work Ombudsman has produced a detailed guide to bringing a small claim, which you can access here <http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/taking-legal-action-in-the-small-claims-court>.

If the amount that you are claiming is an entitlement under a contract only, and it is less than \$10,000, you can bring a small claim in the NSW Local Court. Information about the NSW Local Court can be accessed here [www.localcourt.lawlink.nsw.gov.au](http://www.localcourt.lawlink.nsw.gov.au).

If the amount that you are claiming is more than \$10,000 (for a contractual entitlement) or more than \$20,000 (for an entitlement under an Award or the Fair Work Act), you can still take legal action to recover the money owed to you, but you will be unable to use the small claims procedure of either the Federal Circuit Court or Local Court. Your options will be to bring a general application to the Federal Circuit Court or Federal Court of Australia, or to make an application to the General Division of the Local Court or NSW District or Supreme Courts. **If you make these types of claim and are unsuccessful, you can be ordered**

**to pay your employer’s legal costs, which can be substantial. It is therefore very important that you seek legal advice before you take this type of action.**

### **Where Can I Get Legal Advice?**

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The information contained in this fact sheet is basic, general information only. It is not a substitute for getting legal advice about your individual situation, and the options that would be best for you. If you have read this fact sheet and think that you may want to take action to recover an underpayment, we strongly recommend that you follow up some of the references contained in this fact sheet to get more detailed information about the law. We also strongly recommend that you get legal advice, by contacting:

- Community Legal Centres NSW. Go to [www.clcnsw.org.au/](http://www.clcnsw.org.au/) or call 02 9212 7333.
- Legal Aid NSW. Go to [www.legalaid.nsw.gov.au/](http://www.legalaid.nsw.gov.au/) to find your local office.
- LawAccess NSW. Go to [www.lawaccess.nsw.gov.au/](http://www.lawaccess.nsw.gov.au/) or call 1300 888 529.
- The Law Society of NSW Solicitor Referral Scheme, for a referral to a private lawyer. Go to [www.lawsociety.com.au/community/findinagalawyer/probono](http://www.lawsociety.com.au/community/findinagalawyer/probono) or call 02 9926 0333.

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