Workplace Underpayments

Employment Rights Legal Service

What is an underpayment?

An underpayment happens when an employee receives less pay than they are legally entitled. **Examples of this include:**

- Other unpaid entitlements, including superannuation, allowences, personal leave, annual leave loading, long service leave, redundancy and tax.
- Sham contracting or incorrect employment status
- Misrepresenting entitlements or workplace rights (including deductions or requirements to spend)
- Incorrect wage under the award/contract (including overtime and penalty rates)
- Employee not paid for all hours worked
- Occasional payments to keep employees interested

An underpayment = not being paid your entitlements or what you are owed for the work you have done.

Workplace entitlements

Employees' entitlements come from various 'workplace instruments', such as the Fair Work Act 2009 (Cth), a relevant Award, a relevant enterprise agreement, and/or an employment contract.

Fair Work Laws

- Minimum rights and entitlements for all employees
- Includes National Employment Standards

Awards

- Set minimum pay and conditions for an industry or occupation
- Cover most employees in Australia

Enterprise Agreements

- Set minimum pay and conditions for a particular workplace
- Negotiated and approved through a formal process

Employment Contracts

- Provide additional conditions for an individual employee
- Can't reduce or remove minimum entitlements

An employment contract cannot set conditions that are worse than the underlying Award. For example, if an Award provides that you should be earning $35 per hour, but under your contract you have agreed to be paid $30, your employer has underpaid you.

Steps to recover your underpayment

Step 1: Work out your entitlements

- Check your employment contract to see the agreed terms and conditions of your employment.
- Check the relevant Award, if there is one (Note: not all employees are covered by an Award). You can use the Fair Work Ombudsman's 'Find My Award' tool to figure out if there is an Award that covers you.
- If your workplace has an enterprise agreement registered with the Fair Work Commission, check the agreement to see the minimum entitlements for someone performing your role.
- Calculate the correct amount you should have been paid throughout your employment. You can use the Fair Work Ombudsman's 'Pay and Conditions Tool' to help you with this.

Step 2: Figure out how much you were paid

To figure out how much you have been paid throughout your employment, review your:

- payslips;
- bank statement;
- group certificate/income statement; and
- superannuation fund.

If your employer has not been giving you payslips or refuses to give you payslips, you should contact the Fair Work Ombudsman.

Step 3: Calculate the underpayment

To calculate the underpayment, minus the total amount you were paid from the total amount you should have been paid throughout your employment.

Step 4: Speak to your employer

Send your employer an informal email setting out that you think you've been underpaid and requesting them to pay you your proper entitlements. If you employer asks to have a meeting with you to discuss the issue, take notes during the meeting so you have a record of the conversation.

Sometimes employers accidentally underpay their employees and will fix the underpayment as soon as they become aware of it.

If your employer does not fix the underpayment, proceed to Step 5.

Step 5: Send a formal letter of demand

Draft and send a letter to your employer that sets out:

- the source of your entitlements (e.g. the hourly rate in the relevant Award);
- the total underpayment;
- the method of calculation;
- a timeframe for your employer to repay the amount (less than 14 days may be unreasonable); and
- the steps you will take if your employer does not repay the amount (e.g. go to court).

Step 6: Make a complaint to a regulator

You can contact the Fair Work Ombudsman for assistance with underpaid wages. The Fair Work Ombudsman can investigate complaints, enforce compliance measures, and assist employees to recover unpaid wages. In serious cases, the Fair Work Ombudsman may commence a court claim against employers.

You can report unpaid superannuation to the Australian Taxation Office. The Australian Taxation Office will attempt to recover any unpaid superannuation.

Step 7: Make a court claim

If you have tried everything you can, and your employer still won't pay you your unpaid wages, you can commence a claim in court. If you are successful, a court will order your employer to repay you.

You have 6 years from the date of the underpayment to bring a related claim.

There are several different courts you can bring an underpayment claim in:

Court	Division	Claim Amount	Filing Fee (as at 1 July, 2025)	Process
Federal Circuit and Family Court of Australia (FCFCOA)	Small Claims	Less than $10,000	$300	Relatively informal and quick
		$10,000 - $50,000	$480	
		$50,000 - $100,000	$560	
	General	More than $100,000 and/ or seeking penalties	$835	More complex and formal process
Local Court of NSW	Small Claims	$20,000 or less	$172 - $300	Relatively informal and quick
	General	Between $20,000 and $100,000	$355	More complex and formal process
Industrial Court of NSW	Small Claims	Up to $100,000	$292	Relatively informal and quick
	General	More than $100,000 and/ or seeking penalties	$804	More complex and formal process

Note: Filing fees are current as at 1 July 2025. *For the most accurate and up-to-date information, please check the relevant court's official website. Fee waivers may be available if you cannot afford the filing fee. This factsheet was last updated on* ***14 May 2026.*** *It was produced by the Employment Rights Legal Service. This factsheet provides general information about the law. It is not a substitute for legal advice.*