

# INDUSTRIAL & EMPLOYEE RELATIONS



## Record Keeping Obligations and Pay Slips Under the Fair Work Act

Businesses operating in the National Industrial Relations system are required to comply with the record keeping and pay slips provisions set out in the *Fair Work Act 2009 (Ch) (the Act)* and the *Fair Work Regulations 2009* (the Regulations).

### Content of Employment Records

Employers must keep employment records for a period of 7 years following the date of an employee's termination.

Records must be legible and in English, they cannot be altered unless it is to correct a genuine error. They can be kept in an electronic format but should be easily printable.

The employment record must include:

#### 1. General information:

- the employer's name.
- the employer's Australian Business Number (ABN) (if any).
- the employee's name.
- the employee's commencement date.
- the basis of employment such as full or part-time and permanent, temporary or casual.

#### 2. Hours of Work

- hours worked by employees including casual or irregular part-time employee.
- overtime hours worked each day, including when the employee started and finished working overtime hours if a penalty rate or loading must be paid.

*Note - It is recommended that employers keep detailed time and wages records to avoid disputes, including start and finish times for each day, meal and crib breaks.*

#### 3. Leave

- leave taken (including unpaid leave).
- leave balance.

#### 4. Payments

- rate of pay or salary.
- gross and net amount paid.
- Deductions.
- details of all payments, including bonus, loading, allowance loading, penalty rates.

- superannuation contributions, including amounts, dates of contributions, the name of the fund, the instruction from the employee to pay into a particular fund and the date that instruction was made (*i.e. the superannuation contribution form provided on commencement of employment or during employment*).

## 5. Agreements

- copy of any written agreement for averaging of hours or Time in Lieu instead of payment for overtime worked.
- copy of written agreement where an employer and employee have agreed to the employee taking leave in advance. The agreement must record the hours of leave to be taken in advance and the commencement date of the leave. It must be signed by the employee and the employer.
- copy of agreement where an employer and employee have agreed for an employee to cash out accrued leave, including the number of hours to be cashed out and the amount and date of payment.
- copy of any individual flexibility arrangement, including a copy of the notice terminating the arrangement.
- copy of any guarantee of annual earnings.
- copy of annualised wage arrangement made under an award or agreement.

*Note – make sure you check the relevant industrial instrument for rules around the above types of agreement prior to entering into any agreement.*

## 6. Termination

- The manner of termination such as by notice, by mutual agreement, summarily or any other manner.
- If notice was provided how much.
- The name of the person who terminated the employment.

## Content of Pay Slips

Employers must issue pay slips to all employees within one working day of pay day. Pay slips can be in electronic or hard copy format.

The pay slip must include:

- the employer's name.
- the employer's ABN.
- the employee's name.
- the date of payment.
- the pay period to which the payment relates to.
- the gross and net amounts.
- all other payments made including loadings (including casual loading), allowances, bonuses, incentive-based payments, penalty rates, or other separately identifiable entitlement paid.
- any deductions.
- superannuation amount the employer is required to make for that pay period.
- the name and number of the superannuation fund the contributions are made.

*Note – superannuation may be made by the employer to nominated funds every 3 months, but the pay slips must show the contribution required to be made for that pay period.*

If applicable the pay slips must include:

- the rate of pay, if the employee is paid as such and the number of hours worked at that rate.
- the rate as at the last day in the pay period, if the employee is paid an annual salary.

### Who can request a copy of the employment records?

Employees and former employees have a right to request a copy of their own records.

Fair Work Inspectors can also request employment records by issuing a “Notice to Produce documents or records” under section 712 of the Act.

The Administrative Appeal Tribunal can issue a notice on behalf of the Fair Work Ombudsman for a person or company to produce documents, which may include employment records.

Less frequently other courts and regulatory bodies may request copies of employment records.

### Potential consequences of breaching record keeping obligations

Employment records may be requested by the Fair Work Ombudsman when an employee or former employee has lodged a complaint for underpayment of wages and/or entitlements. A presumption exists in favour of an employee or former employee if the employer did not keep employment record and pay slips or has failed to produce the documents for inspection.

The Fair Work Ombudsman may also conduct audits to ensure businesses comply with their record keeping requirements and pay their employees the correct entitlements. It is critical that businesses have well maintained and compliant records to prevent penalties associated with contraventions of record keeping obligations.

The Fair Work Ombudsman can issue infringement notice which have to be paid within 28 days of the notice being issued. The maximum penalties in infringement notices are \$1,332 for an individual and \$6,660 for a company.

The Fair Work Ombudsman may decide to take the matter to court where higher penalties can be imposed, up to \$133,200 for an individual and \$666,000 for a company if it is determined that the contravention occurred knowingly and as part of a systematic pattern of conduct.

It is also prohibited to make records that are false or misleading or provide false or misleading information to the Fair Work Ombudsman, with civil penalties up to \$13,320 for an individual and \$66,600 for a company.

### Requiring assistance

**Master Builders is here to help you.**

Our industrial and employee relations specialists can provide advice and assistance to help you meet your obligations.

If you require assistance in understanding your record keeping and pay slips obligations, or require templates to assist you in meeting these obligations please contact [iradvice@mbawa.com](mailto:iradvice@mbawa.com)