



What's changing with Criminalising Wage Underpayments?

Under the Closing Loopholes Act 2023, intentionally underpaying employees (Wage Theft) will soon be a criminal offence.

We're here to help you with

- Criminalising intentional wage underpayments
- Civil penalties for wage underpayments
- Civil penalties and serious contraventions
- Compliance notices



smallbusinesspeak.org.au



peak@cosboa.org.au

Criminalising Wage Underpayments

What's changing?

From **1 January 2025**, if an employer is required by law to pay an employee a certain amount (such as wages or superannuation contributions) and they **engage in deliberate conduct** which results in a **failure to pay the required amount**, the employer will have **committed 'Wage Theft'**.

However, the intention of an employer **must be proven to the criminal standard of proof**, which is beyond reasonable doubt. **Genuine mistakes or miscalculations will not be captured** by the new Wage Theft laws.

Whilst the offence applies to intentional underpayments which occur after 1 January 2025, the **wage underpayments provisions can apply** to those which are **part of a pattern of conduct** which **commenced before that date**.



These changes come into effect on

1 January 2025

The Wage Theft provisions can apply to those which are part of a pattern of conduct which commenced before that date.

How can small businesses best prepare for these changes?

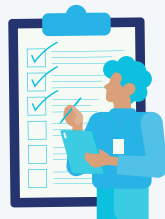
To best prepare your business for these changes, it is recommended that you:



Review employment contracts and other documentation to **ensure remuneration** provisions are **clearly** and properly **articulated**



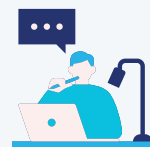
Review all record keeping practices to ensure they are compliant and robust



Perform regular wage and superannuation payroll compliance audits to ensure there are no underpayment issues



Review and comply with the **Voluntary Small Business Wage Compliance Code** when it becomes available



If there is **any suspected underpayment**, **rectify** the underpayment **immediately** and **consider self-reporting** to the Fair Work Ombudsman

Criminalising Wage Underpayments



What is wage underpayment?

From 1 January 2025, any **employer who intentionally does not pay** or provide employees their correct entitlements **may be guilty of a criminal offence**.

This could mean the employer is **subject to penalties, underpayment claims or prison sentences** in extreme cases.

It's important to make sure you are paying your employees correctly before these changes come into effect.

Why is the government making changes to wage underpayments?

The decision to criminalise wage theft was the government's response to a widely held concern that **underpaying workers, particularly those who are vulnerable, is a crime** that should be prosecuted accordingly.

The new legislation is designed to ensure employers who deliberately underpay workers are no longer allowed to do so.



Did you know?

Genuine mistakes or miscalculations **will not be captured** by the new wage theft laws.



Criminalising Wage Underpayments

Can I self-report an underpayment?

An employer can **avoid potential criminal liability** for underpayment issues **by self-reporting** to the Fair Work Ombudsman (FWO).

Upon self-reporting, and if the employer cooperates fully with the FWO, the **FWO may agree to enter into a written agreement** called a 'cooperation agreement' with an employer.

The **FWO will not refer the conduct** to the Department of Public Prosecutions (DPP) or the Australian Federal Police (AFP) for prosecution. However, a FWO inspector can still initiate or continue civil proceedings in relation to the conduct.

A '**cooperation agreement**' covers the **specific conduct that the employer has engaged in** which may amount to wage theft.



If an employer is suspected of committing wage theft

If an **employee raises concerns** about underpayments to the FWO, a **Fair Work Inspector may investigate**.

If an **employer does not cooperate** with the Fair Work Inspector to rectify a breach, a **Fair Work Inspector can issue a compliance notice**.



Did you know from

27 February 2024

Compliance notices issued to employers can require the employer to calculate the amount of underpayment owed to an employee (or group of employees) and pay the amount owed accordingly.

Criminalising Wage Underpayments

How to be compliant as a small business employer



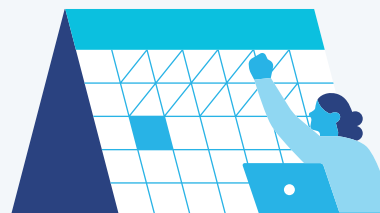
Understand the new requirements set out in the new criminalisation of wage theft laws



Review employment contracts and other documentation to ensure remuneration provisions are clearly and properly articulated



Review all record keeping practices to ensure they are compliant and robust



Review the Voluntary Small Business Wage Compliance Code when it becomes available



Communicate these changes to your employees as required

Know the risks

Wage theft offences may mean a punishment of **up to 10 years in prison** and/or hefty fines for guilty parties

Criminalising Wage Underpayments

What is happening with state based wage theft laws?

Victoria and Queensland already have their own wage theft laws in place, which differ slightly to the new federal laws.

Victoria has announced it **intends to repeal its wage theft laws** with the introduction of the new federal law. However, Queensland has not yet made a decision. Therefore, at this stage, **state based laws may run parallel to federal wage theft laws** – which only highlights the need to ensure wages are correct.



How can I ensure I pay employees correctly?

It is important to understand employee wages and conditions. The **Fair Work Ombudsman has useful guidance material available** to assist employers to understand their obligations.



Criminalising Wage Underpayments

What happens if you don't comply?

Wage theft is different to ordinary underpayment claims which happen due to misunderstandings or unintentional conduct by an employer. Wage theft claims **may carry criminal penalties for employers** and **personal liability for officers and directors** of the business.

If the **Fair Work Ombudsman, an employee or union makes an underpayment claim against the employer**, a Court can **order the company to make back payments of the entitlements**. The Court can also make the **employer pay a fine**.

If an employer is found to have committed wage theft, the **criminal penalties** are:

- where the Court can determine the value of the underpayment
- the greater of three times the amount of the underpayment and \$7.825 million
- or \$7.825 million; and where the Court cannot determine the value of the underpayment, \$7.825 million.

Importantly, the new wage theft laws **carry potential personal liability** for individuals such as officers and directors, who **may face penalties** up to:

- a maximum of 10 years imprisonment; and/or
- if the Court can determine the underpayment, the greater of three times the amount of the underpayment and \$1.565 million, or \$1.565 million if the Court cannot determine the underpayment.



A **person** can also be **fined** if they were **'involved in'** the company's contravention. The maximum fines have recently increased.

Criminalising Wage Underpayments

Civil Penalties for wage underpayments

From 1 January 2025, for a non-small business employer, the **new laws increase** the **maximum penalty for wage underpayments** to **the greater of three times the value of the underpayment** or the penalty unit amount for the contravention.

I'm a small business, is there an exception to wage theft for small businesses?

The federal government will establish a **Voluntary Small Business Wage Compliance Code** (Code). This will apply if you have less than 15 employees.

If the **Fair Work Ombudsman is satisfied that a small business has complied** with that Code then, **even if there are underpayments discovered**, the matter **will not be prosecuted as criminal wage theft**. The Code has not yet been released.

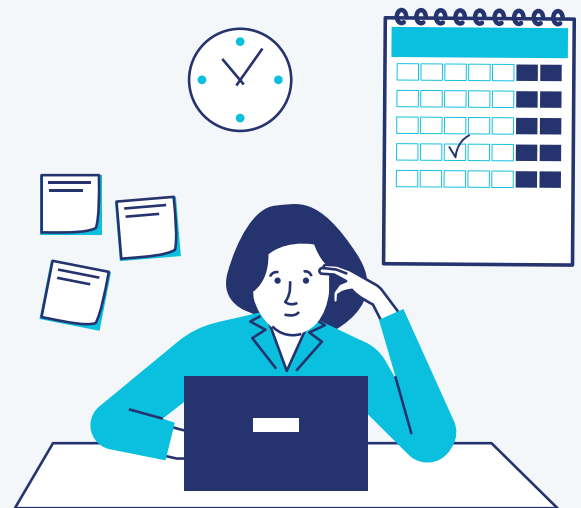
Key dates

From 27 February 2024

- Compliance notices can be issued to employers.
- Significant increase in civil penalties and change to the definition of a serious contravention.

From 1 January 2025

- Intentional underpayment of wages by employers will become a criminal offence.
- Significant increase in civil penalties for wage underpayments.



Not sure where to start?

If you're struggling to navigate these changes, you don't have to tackle them alone, find more information at Small Business Peak, or visit fairwork.gov.au.

Criminalising Wage Underpayments

There are larger fines for 'serious contraventions'

A **serious contravention** happens when the Court finds that:

- the employer or company knew they were contravening an obligation under workplace laws such as the Fair Work Act; or
- the employer or company was reckless as to whether the contravention would occur.

A 'serious contravention' fine can be:

- \$187,800 per contravention for an individual;
- \$939,000 per contravention for a company with less than 15 employees; and
- \$4,695,000 per contravention for a company with 15 or more employees.

Fast Fact

Underpayments of wages do not always mean there will be a claim in the Court.

In some cases, the Fair Work Ombudsman may investigate if employees have been paid their entitlements, and may issue a 'compliance notice' to request that the employer calculates the underpayment amounts and pay those amounts to employees.



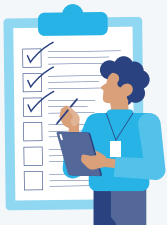
Criminalising Wage Underpayments

What should small businesses do next?



Review employment contracts

- Review existing employment and other documentation to ensure remuneration provisions are clearly and properly articulated.



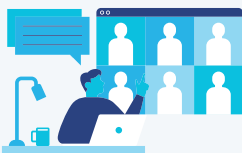
Perform a wage and superannuation payroll compliance audit

- Review current record keeping practices to ensure a compliance checking process is in place.



Comply with the Voluntary Small Business Wage Compliance Code

- Become familiar with the Code when it becomes available and ensure your business complies.



Ensure you pay employees correctly

- It's important to understand employee wages and conditions. The Fair Work Ombudsman has useful guidance material available to assist employers to understand their obligations.

PEAK



SMALL BUSINESS PEAK

A large, white, stylized arrow graphic that starts as a horizontal line at the bottom left, then curves upwards and to the right, ending in a triangular arrowhead. The text 'SMALL BUSINESS PEAK' is written in white, bold, sans-serif capital letters, with 'SMALL BUSINESS' on the top line and 'PEAK' on the bottom line, following the curve of the arrow.

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