



**A guide to paying  
employees correctly and  
the Voluntary Small Business  
Wage Compliance Code**



This guide helps small business employers take steps to pay their employees correctly. It also helps small business employers understand and access the protections of the Voluntary Small Business Wage Compliance Code (the Code) in their business.

Small business employers who have not intentionally underpaid their employees can access the protections of the Code to avoid criminal prosecution for underpayments. You can view the Code at [fairwork.gov.au/vsbwcc](https://fairwork.gov.au/vsbwcc)

## Who is this guide for?

This guide is for **small business employers** who have less than 15 employees.

It is **not** for:

- ▶ larger businesses with 15 or more employees
- ▶ independent contractors
- ▶ hirers of regulated workers.

## Why use this guide?

Running a small business has its own unique set of challenges. This guide will help you to meet your obligations under the Fair Work Act (FW Act) and pay your employees correctly.

Use this guide to:

- ▶ understand what the criminal offence is
- ▶ understand the consequences for underpaying employees
- ▶ find out about the Code and how to access it
- ▶ confirm you're paying your employees correctly
- ▶ remain compliant on wages
- ▶ take appropriate action to fix issues if they're identified.

## What is the criminal offence?

From 1 January 2025, if an employer intentionally underpays an employee, they can be subject to criminal prosecution. Underpayment may include:

- ▶ not paying sufficient wages, including penalty rates, overtime rates and allowances (or not paying them at all)
- ▶ not paying amounts required by the applicable award or enterprise agreement
- ▶ not paying other entitlements, for example superannuation for some employees.

Small businesses will commit the criminal offence for intentionally underpaying an employee if:

- ▶ they're required to pay an amount to an employee, such as wages or super
- ▶ they fail to pay the amount in full on or before the day they're due to be paid
- ▶ they **intentionally engage** in conduct with the intent that it results in those amounts not being paid.

Intentional conduct includes:

- ▶ taking an action, such as purposefully paying less than an employee's minimum entitlements
- ▶ failing to take an action, like purposefully not paying an employee at all.

If a person is convicted of a criminal offence, a court may impose a maximum of 10 years in prison for an individual. They can also impose significant penalties for the individual or a company, or both.

Maximum penalties for a company	Maximum penalties for an individual
If the court can determine the underpayment amount, the maximum penalty will be the greater of: <ul style="list-style-type: none"> <li>▶ 3 times the underpayment amount</li> <li>▶ \$8,250,000.</li> </ul>	If a court can determine the underpayment amount, the maximum penalty will be the greater of: <ul style="list-style-type: none"> <li>▶ 3 times the underpayment amount</li> <li>▶ \$1,650,000.</li> </ul>
If the court can't determine the underpayment amount, the maximum penalty is \$8,250,000.	If a court can't determine the underpayment amount, the maximum penalty is \$1,650,000.

The criminal offence does not apply for underpayments that happen because of a genuine mistake.

It's not just the business owners who can be prosecuted for criminal underpayments. Other people involved in an underpayment can also be held criminally responsible too. This could include, for example, payroll managers or accountants in the business where their conduct contributed to an intentional underpayment.

## Are there any exceptions?

There are limited circumstances where the criminal offence won't apply to particular entitlements. The exceptions broadly apply to:

- ▶ employees in New South Wales, South Australia, Queensland, Tasmania and Victoria who are employed by sole traders, partnerships, other unincorporated entities, or non-trading corporations
- ▶ most Victorian state government employees
- ▶ Tasmanian local government employees.

An employer of one of the above employees **can** be criminally prosecuted for the intentional underpayment of wages. However, the criminal offence does not apply to these employees for the following specific types of underpayments:

- ▶ superannuation contributions
- ▶ payment for taking long service leave
- ▶ payment for taking leave connected with being the victim of a crime
- ▶ payment for taking jury duty leave or for emergency services duties.



### Sole trader in Victoria underpays an employee's wages and super

Jason runs a small plumbing business in Victoria. His ABN is registered as a sole trader. He has recently hired his first employee, Daniel, who is 18 and has just finished school. Jason pays Daniel a flat rate of \$10 per hour because he knows Daniel doesn't have much experience so he probably doesn't know how much he should be paid, and this saves Jason money on Daniel's wages and super.

Six months later, Daniel discovers that Jason should have been paying higher wages and super. He contacts the FWO to seek help for underpaid wages and super.

If Jason's actions are found to be intentional, he could face criminal prosecution for the underpayment of Daniel's wages. However, due to the fact Jason is a sole trader in Victoria, he cannot be criminally charged for the underpayment of Daniel's super because the criminal offence does not cover super payments by Victorian sole traders.

Jason may instead face civil penalties for underpayment of super under the compulsory superannuation guarantee. The Australian Taxation Office is the primary enforcement agency for the compulsory superannuation guarantee.

For more details about these exceptions and who they apply to visit [fairwork.gov.au/criminal](https://www.fairwork.gov.au/criminal)

## What is the Code?

The Code is a legislative instrument created under the FW Act. Its purpose is to help small business employers avoid criminal prosecution if they didn't intentionally underpay their workers. The FWO can't refer a small business for criminal prosecution under the criminal offence if they can satisfy us that they have complied with the Code.



Accessing the protections of the Code prevents a business from being charged under the criminal offence. However, the FWO and others may still take civil action against a small business employer and those involved in the underpayment.

Civil action includes a range of different non-criminal methods for dealing with breaches of workplace laws. For example, it can include the FWO issuing an employer with a Compliance Notice or accepting an Enforceable Undertaking. It can also include an employer being penalised or fined by a court.

For more information on what type of civil action the FWO can take, see our Compliance and Enforcement Policy at [fairwork.gov.au/compliance-and-enforcement](https://www.fairwork.gov.au/compliance-and-enforcement)

## How can I access the protections of the Code?

Employers who are meeting their obligations regarding employee pay and entitlements will comply with the Code, without having to take any other steps.

A small business employer will have complied with the Code if they did not intend to underpay their employee. The Code contains several factors that may be relevant when the FWO considers whether a small business employer intentionally underpaid their employee. This includes:

- ▶ any steps the business took to check they're paying their employees correctly and staying up to date with changes. This includes any minimum pay increases or legislative updates
- ▶ any steps the business took after finding out about the underpayment, including:
  - correcting mistakes
  - promptly back paying workers
- ▶ taking steps to ensure the underpayment doesn't happen again.

There are several factors that a small business can reference to demonstrate they tried to pay their employees correctly and therefore be eligible for the protections of the Code.

Importantly, the small business does not have to check off every factor in the Code to get the benefit of the Code, and no one factor is critical. Instead, we look at the overall picture and the business' particular circumstances where an underpayment has occurred to determine whether the Code has been complied with.

## ✓ Checklist:

# How can I make sure I am paying my employees correctly?



**Reminder:** This guide helps you to take steps to make sure you are paying your employees correctly to begin with.

**This guide is not the Code.** If you have unintentionally underpaid an employee, access the Code at [fairwork.gov.au/vsbwcc](https://www.fairwork.gov.au/vsbwcc)

By taking reasonable steps to make sure you're paying your employees correctly, you can reduce the risk of underpayments. To do this, make sure you're following the below steps.

### 1 - Check the correct pay rates and entitlements

- Make sure you've identified the correct award or enterprise agreement, and check you have the correct version for the specific time period.
  - If no award or enterprise agreement applies to your employees, confirm that the National Minimum Wage order applies at [fairwork.gov.au/award-free](https://www.fairwork.gov.au/award-free)



#### Find your award or enterprise agreement

Our 3-step Find my award tool will help you find the award that covers your workers at [fairwork.gov.au/findmyaward](https://www.fairwork.gov.au/findmyaward)

If you're not sure if your business is covered by an enterprise agreement, you can search the Fair Work Commission's website at [fwc.gov.au/agreements](https://www.fwc.gov.au/agreements)

- Make sure your employees are correctly classified under their award or enterprise agreement.
  - For help understanding how to classify employees, visit [fairwork.gov.au/award-classifications](https://www.fairwork.gov.au/award-classifications)
- Find out the types of information that can affect pay rates and entitlements, and confirm this information is up to date. This can include an employee's classification, relevant qualifications, age, location, duties and hours of work.
  - Note: If an employer used information they knew was incorrect to calculate an employee's pay and entitlements, this will influence whether they have complied with the Code.
- If you employ an apprentice or trainee, make sure that you understand your obligations under their training contract. This includes their minimum pay rates, when their pay increases to the next level and any work-related allowances or penalty rates.
  - For more information on apprentice and trainee rights and entitlements, visit [fairwork.gov.au/apprenticestrainees](https://www.fairwork.gov.au/apprenticestrainees)
- Pay all relevant entitlements as required, including:
  - minimum hourly rates
  - loadings or allowances
  - penalty rates or overtime
  - any other separately identifiable amounts
  - Note: These entitlements can be affected by the hours an employee has worked in a pay period, like overtime, allowances and penalty rates. Make sure to check what applies to the hours the employee worked.



**You can find up to date minimum pay rates by:**

- ▶ using our Pay calculator at [fairwork.gov.au/pact](https://fairwork.gov.au/pact)
- ▶ finding the Pay guide for your award at [fairwork.gov.au/payguides](https://fairwork.gov.au/payguides)
- ▶ checking the pay tables in your enterprise agreement, if applicable
- ▶ contacting the FWO
- ▶ seeking advice from a reputable industrial relations professional.

Every year the Commission reviews the National Minimum Wage and pay rates under awards. Any changes that are made usually begin on the first full pay period on or after 1 July.

- Complete any other pay-related requirements, such as reconciliations for annualised salaries or piece rates.

**2 – Follow your pay slip and record-keeping obligations**

- Provide pay slips within one working day of pay day.
- Include all required information on pay slips.
  - For information on what must be included on a pay slip, including tools and resources such as a pay slip template, visit [fairwork.gov.au/payslips](https://fairwork.gov.au/payslips)
- Keep readily accessible, legible and accurate time and wages records.
  - For information on what types of records must be maintained, including tools and resources to support you with meeting these obligations, visit [fairwork.gov.au/recordkeeping](https://fairwork.gov.au/recordkeeping)



**It is best practice to keep on each employee's file:**

- ▶ emergency contact details
- ▶ the employee's address and phone number
- ▶ a job description
- ▶ the name of the award or agreement and the employee's classification
- ▶ leave requests
- ▶ any notifications from a casual employee about changing to full-time or part-time employment.

**3 – Stay up to date with workplace laws**

- Make reasonable efforts to stay up to date with changes to your obligations relating to your employee's pay. This includes changes to the law arising from decisions from courts that affect pay rates, or changes to workplace instruments such as awards. To do this you can:
  - subscribe to our email updates at [fairwork.gov.au/emailupdates](https://fairwork.gov.au/emailupdates)
  - follow us on social media for announcements and reminders, including on [Facebook](#), [X](#) (formerly Twitter), [YouTube](#), [LinkedIn](#) and [Instagram](#)
  - consider joining an employer association and subscribing to their updates
  - regularly check pay information, including checking for updates every July when minimum pay rates increase.
- Make sure you keep up to date with changes relating to your employee. This could include changes to their duties or location of work, hours of work or roster, their age or relevant qualifications. You should also be aware of periodic pay rate changes under their award, enterprise agreement or the National Minimum Wage Order.



You can access a wide range of free tools and resources including templates, best practice guides, fact sheets and online courses to help you understand workplace laws. For more information go to [fairwork.gov.au/tools-and-resources](https://fairwork.gov.au/tools-and-resources)

#### 4 – Get help if you need it

Seek advice from experts who are a reliable source for workplace information including:

- seeking advice from the Fair Work Ombudsman’s website and other resources and services at [fairwork.gov.au](https://www.fairwork.gov.au)
- visiting the Fair Work Commission’s website for advice or calling them for assistance at [fwc.gov.au](https://www.fwc.gov.au)
- seeking advice from other experts including:
  - employer associations or unions
  - industrial professionals, such as lawyers or industrial relations consultants
  - payroll associations
- providing accurate information about your employees’ circumstances and your business
- reviewing the advice you receive to ensure it is based on accurate information about your business and the employee’s circumstances
- putting the advice you have received into action.

#### 5 – Fix any issues quickly if they occur

Make sure you take reasonable steps to address any underpayments quickly. You could do this by:

- repaying the employee as soon as possible
- making sure you understand how the underpayment happened
- taking appropriate steps to fix any mistakes or deficiencies in systems to prevent the same issue from happening again in the future for any employee
- speaking to your employee and explaining:
  - what is being fixed and how you identified the problem
  - any changes that you’ve made to prevent this from occurring again.



For more information on how to fix an underpayment, including information about tax obligations and super guarantee contributions, see [fairwork.gov.au/how-to-fix-an-underpayment](https://www.fairwork.gov.au/how-to-fix-an-underpayment)



#### Fixing an underpayment

Wayne is a small business employer with 4 employees. He started his business 5 years ago.

One of his employees raises an issue with their pay. They believe that they have not been paid their correct weekend penalty rates. Wayne isn’t sure how this could have happened as he had sought advice from the FWO when he started his business to make sure he had done everything correctly.

Wayne immediately conducts a review of his payroll against the requirements of the relevant award. He discovers that, since he input the data, the Fair Work Commission changed the weekend penalty rates in the award, which he wasn’t aware of. As a result, he has been underpaying weekend penalty rates.

Wayne contacts his employer association for further advice on resolving the situation and they advise him on next steps. He immediately notifies his employees of the issue and explains how it happened. He also engages an external payroll service to correct and audit his payroll software, and backpays all employees in their next pay cycle.

## Where can I go for more help?

As a small business, you can access our Employer Advisory Service which gives eligible small businesses free tailored written advice on pay and entitlement issues. Find out more about this service at [fairwork.gov.au/eas](https://fairwork.gov.au/eas)

You can call us on 13 13 94 to speak with a helpful adviser who can provide tailored advice about your rights and obligations. Find out what information you'll need before you call at [fairwork.gov.au/contact-us](https://fairwork.gov.au/contact-us)

For general information, you can contact us online through My account at [fairwork.gov.au/register](https://fairwork.gov.au/register). We know your time is valuable, so please make sure your enquiry is suitable for My account before submitting. Find more information at [fairwork.gov.au/my-account-faq](https://fairwork.gov.au/my-account-faq)



If you're a member of an employer association you can also request help from them.

## Reporting underpayments to us

We encourage small business employers to report underpayments to the FWO.

If we become aware of an underpayment, we may start an investigation or an inquiry or take other steps, even if the affected employees have been back paid.

If you identify an underpayment that has been happening over a long period of time or is for a large amount, it's best to report it to us as soon as possible.

We're less likely to take legal action against an employer who has self-reported an issue to us, cooperated with our enquiries and fixed the underpayment. For more information about when it may be appropriate to report an underpayment see our Compliance and enforcement policy at [fairwork.gov.au/compliance-and-enforcement](https://fairwork.gov.au/compliance-and-enforcement)

To report an underpayment, you can contact us.



## Frequently asked questions

.....

**Q: What is the role of the FWO in the criminal offence and the Code?**

**A:** The FWO is responsible for investigating the criminal offence and referring employers who have intentionally underpaid their employees to the Commonwealth Director of Public Prosecutions (CDPP) or Australian Federal Police (AFP). The CDPP or the AFP will decide whether to prosecute an employer for the underpayment.

The FWO is also responsible for deciding whether a small business complied with the Code.

.....

**Q: How do I access the protections of the Code?**

**A:** You can request that the FWO assess your compliance with the Code when reporting an underpayment to us or during an investigation. We will then review the steps you took before the underpayment occurred to determine if you have complied with the Code. We may request additional information to help make this decision.

.....

**Q: How do I show the Fair Work Ombudsman that I have complied with the Code?**

**A:** Each case will be assessed by the FWO on an individual basis using relevant information and supporting documentation to determine if your business has complied with the Code. This could include employee records, contracts or pay slips.

.....

**Q: If I was a small business when the underpayment happened but I now have more than 15 employees, can I still access the Code?**

**A:** Yes, the FWO will consider how many people you employed at the time the underpayment occurred. This means that if you were a small business at the time of the underpayment but no longer meet the definition of a small business, you can still access the protections of the Code in relation to that previous underpayment. Under the FW Act, a small business has less than 15 employees.

.....

**Q: What will happen if the FWO determines I have complied with the Code?**

**A:** If the FWO determines that you have complied with the Code, we can't refer you for criminal prosecution for the underpayment. However, the FWO or other parties, such as a union or an individual, may still take civil action against you and those involved in the underpayment. Civil action can include fines and court-ordered penalties.

.....

**Q: What will happen if the FWO determines I haven't complied with the Code?**

**A:** If the FWO determines that you have not complied with the Code, we may investigate and determine any appropriate enforcement outcome in accordance with our Compliance and Enforcement Policy. This may include commencing civil litigation or referring your conduct to the CDPP or AFP who will decide whether to prosecute. To view our Compliance and Enforcement Policy, visit [fairwork.gov.au/compliance-and-enforcement](https://www.fairwork.gov.au/compliance-and-enforcement)

However, if you demonstrate a willingness to cooperate and fix any issues (see [Step 5](#) in the checklist), the FWO may consider entering into a written agreement with you regarding conduct that you self-reported to us. This is called a 'cooperation agreement'.

**Q: What's the difference between the Code and a cooperation agreement?**

**A:** The Code is only for small business employers. It allows them to demonstrate that underpayments were not intentional.

A cooperation agreement is a written agreement between the FWO and an employer or person who has reported an underpayment to us that may amount to a criminal offence. A cooperation agreement provides protection from potential criminal prosecution. The FWO will decide whether it is appropriate to enter into a cooperation agreement. We will consider several factors, including:

- ▶ the nature of your conduct
- ▶ your level of cooperation with us
- ▶ your willingness to try and fix the issue.

For more information, including the process and what the FWO will consider when deciding whether to enter into a cooperation agreement, see our Cooperation Agreement Guide at [fairwork.gov.au/cooperation-agreements](https://fairwork.gov.au/cooperation-agreements)

**Q: If the FWO determines that I haven't complied the Code, what do I do if I don't agree?**

**A:** If you don't agree with the FWO's decision you should seek legal advice about your options. Our decision can only be challenged through a judicial review. This means that only a court or judge can review our decision.

**Q: Who in the business can receive the protections of the Code?**

**A:** If the FWO decides that a small business employer has complied with the Code, then the FWO can't refer the underpayment for prosecution. This also means that the business' directors, payroll employees and managers involved in the underpayment can't be criminally prosecuted.

**Q: I'm a manager or payroll employee and think I might have been involved in an underpayment that my employer hasn't reported. What should I do?**

**A:** If you are concerned that you were involved in an underpayment that may have been intentional, and your employer has decided not to report this, you can report the underpayment yourself. The FWO may be able to offer you protections, such as entering into a cooperation agreement.

**Q: What will the FWO do with the information and documents I provide?**

**A:** The FWO will consider the information and documents you provide for the purpose of determining compliance with the Code. The FWO may also consider the information and documents for our compliance and enforcement functions.

To understand how the FWO approaches its compliance and enforcement functions, please see our Compliance and Enforcement Policy at [fairwork.gov.au/compliance-and-enforcement](https://fairwork.gov.au/compliance-and-enforcement)



**Contact us**

Fair Work online: [fairwork.gov.au](https://fairwork.gov.au)

Fair Work Infoline: **13 13 94**

**Need language help?**

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

**Help for people who are deaf or have hearing or speech difficulties**

You can contact us through the National Relay Service (NRS).

Select your **preferred access option** and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this resource is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

Last updated: 16 December 2024  
© Copyright Fair Work Ombudsman