

Tasmanian - Ongoing Record-Keeping Audit Program 2010-2011 Report

June 2012

About the Fair Work Ombudsman

The Fair Work Ombudsman (FWO) is an independent statutory agency, created by the *Fair Work Act 2009* (the Fair Work Act) on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- investigating complaints or suspected contraventions of workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries and/or regions are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

This report covers the background, methodology and results of the Tasmanian Ongoing Record-Keeping Program 2010 - 2011.

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Summary

Between December 2010 and November 2011 the FWO conducted the Tasmanian Ongoing Record - Keeping Program 2010 - 2011 (the program). The program assessed compliance with record - keeping and pay slip obligations and was an extension of the 2009/2010 Record - Keeping Program. The program targeted three groups for audit, namely the hairdressing industry, the legal services industry and selected employers audited in the 2009/2010 Record - Keeping Program.

We completed 77 audits and found 61 (79%) employers to be compliant and 16 (21%) employers to have record-keeping/ pay slip contraventions.

Background

The failure of employers to maintain compliant and accurate records of time worked, amounts paid and/or leave taken is evident in many FWO investigations. Compliance with record-keeping and pay slip requirements continues to be an issue across all areas and industries throughout Tasmania.

In 2009 - 2010 we undertook the Tasmanian Ongoing Record- Keeping program, and found almost 40% of the 166 businesses audited had contravened record - keeping/payslip obligations. Based on these findings, a decision was made to extend the program in 2010 - 2011.

Further, it was evident from the previous program that the level of non-compliance was often due to employers being unaware of their responsibilities. It was therefore considered that extending the program would provide an opportunity to educate a greater number of employers about their obligations.

Aim & objective

The aim of the Tasmanian - Ongoing Record-Keeping Audit Program 2010-2011 was to assess compliance with record - keeping and pay slip obligations as per the *Fair Work Act* and the *Fair Work Regulations 2009 (the Regulations)* in the hairdressing industry, the legal services industry and selected employers previously audited.

The objectives were to:

- engage with relevant stakeholders
- educate employers on their workplace obligations
- promote FWO Small Business aids and templates
- audit the compliance with record-keeping and pay slip obligations
- promote the role of the FWO

Stakeholder involvement

We wrote to the following stakeholders notifying them of the program:

- Tasmanian Chamber of Commerce & Industry
- Unions Tasmania
- Liquor Hospitality Miscellaneous Union (now United Voice)
- CFMEU
- Australian Services Union
- Workplace Standards Tasmania
- Senator Catryna Bilyk
- Senator Eric Abetz
- Michael Stevens, Deputy Secretary, Department of Justice Tasmania
- Robert Mallett, Tasmanian Small Business Council

Method

We identified employers for audit using the Yellow Pages and a list of employers previously audited in the 2009/2010 record-keeping campaign. We wrote to the businesses informing them of their selection for audit and requested that they forward us their employees' records for assessment.

Those businesses that did not comply with this request were contacted by phone with a further request. If they claimed that they had not received our initial request we forwarded it to them again by email or post

Those businesses that we found to be compliant were advised in writing of the outcome.

Where we identified contraventions we notified the employer by letter and requested that they signed a commitment form agreeing to rectify the contravention/s. To assist them we also provided a record-keeping fact sheet and copies of the Fair Work Ombudsman pay slip and time sheet templates. All employers rectified their contravention/s.

Results

Overall findings

We analysed the findings in June 2012 and found that of the 77 finalised audits, 61 (79%) employers were compliant and 16 (21%) were in contravention. Three audits are yet to be completed due to ongoing investigations.

Table 1: Audit results

Audit results	
Audits completed	77
• <i>Employers compliant</i>	61 (79%)
• <i>Employers in contravention</i>	16 (21%)
Ongoing investigations	3

All contraventions identified related to non-compliance with employers had record - keeping and/or pay slip obligations.

Findings by Group

The contravention rate varied amongst the three groups of employers audited as shown in the table below.

Table 2: Group contravention rate

	Legal firms	Hairdressers	Businesses re-audited
Entities audited	26	29	25
Audits finalised	24	28	25
Contravention Rate	4 (17%)	7 (25%)	5 (20%)
Compliance Rate	20 (83%)	21 (75%)	20 (80%)
Ongoing audits	2	1	

Of the 28 audits finalised in the hairdressing industry, 7 (25%) employers were in contravention.

Of the 24 legal firms for which audits have been finalised, 4 (17%) employers were in contravention.

Five (20%) of the 25 businesses previously audited in 2009/2010 were in contravention. It was evident from the records provided that the employers did attempt to rectify the initial contraventions, however, had forgotten to include a small particular required on their records/pay slips. For instance one employer had initially failed to include superannuation details on his employee's pay slips. When he was re-audited although he had included some information regarding Superannuation contributions, he had not detailed the name of the fund the payment was made into.

Other findings

In completing this program, we identified several interesting trends.

Generally, we found employers who employed 3 or less employees were more likely to have pay slip contraventions.

Many of the non-compliant employers believed that having their employees' sign a timesheet was all that was required to meet their time and wage record-keeping obligations.

During our audits we informed employers of the various tools and resources available at www.fairwork.gov.au. However, we found some of the smaller hair and beauty entities are largely paper based with limited access to computers and online tools and assistance.

In relation to the legal industry we found some smaller entities were reluctant to participate in the audit campaign as they believed participation was optional. We are taking further compliance action with one law firm for not providing the documentation requested by FWO.

Case Study: Minimal record-keeping

Gail's hairdressing businesses was selected for audit and she forwarded us her records as requested. The assessment of Gail's records revealed she employed two part time employees, but Gail's records were very limited.

Gail's records only detailed the pay period, the number of the hours worked and the gross and nett pay and failed to provide actual hours of work for irregular part time employees and hourly wage rate and leave accruals. Consequently, Gail was found not to be compliant with her obligations. Further, we found she was not issuing adequate pay slips to her employees.

The inspector explained to Gail the record-keeping and pay slip requirements. As Gail did not use a computer the inspector provided her with hard copies of best practice time sheets and pay slips templates downloaded from the Fair Work Ombudsman website. Gail undertook to photocopy these copies to use on a weekly basis.

The inspector also provided Gail with fact sheets on record-keeping and pay slip obligations. Gail was very appreciative of the information provided and agreed to comply with her obligations in the future.

Conclusion

This is the second time we have undertaken a record-keeping awareness program throughout Tasmania. The results indicate we still need to be concerned about the number of non-compliant businesses in relation to record-keeping and pay slip requirements.

We found that many of the non-compliant businesses were small businesses. We also formed the impression that some employers did not consider record-keeping obligations to be a high priority.

It was interesting to find that some of the non-compliant employers did not use computers and still maintained paper based employment records.

We recognise the need therefore to find alternative ways to promote and provide access to FWO templates and information to these smaller businesses. One possibility is to promote this information via employer organisations.

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