

## Protecting vulnerable workers reform

On 15 September 2017 the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 took effect.

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### Who do the changes affect?

The Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 changed the [Fair Work Act 2009](https://www.legislation.gov.au/Series/C2009A00028) <sup>1</sup> (<https://www.legislation.gov.au/Series/C2009A00028>) to:

- increase penalties for 'serious contraventions' of workplace laws
- make it clear that employers can't ask for 'cashback' from employees or prospective employees
- increase penalties for breaches of record-keeping and pay slip obligations
- provide that employers who don't meet record-keeping or pay slip obligations and can't give a reasonable excuse will need to disprove wage claims made in a court (this is also referred to as a 'reverse onus of proof')
- strengthen our powers to collect evidence in investigations
- introduce new penalties for giving us false or misleading information, or hindering or obstructing our investigations.

It also changed laws relating to certain franchisors and holding companies. They can be held responsible if their franchisees or subsidiaries don't follow workplace laws (if they knew or should have known and could have prevented it). These changes took effect from 27 October 2017.

The changes apply to all employers, companies and employees covered by the Fair Work Act 2009 but are particularly important for:

- franchisors and holding companies
- vulnerable employees
- people or companies who do not voluntarily cooperate with our investigations.

### What do the changes mean for you?

#### For employers:

Make sure you're meeting your [pay slip](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips) ([www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips)) and [record-keeping](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping) ([www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping)) obligations. Businesses that don't keep the right records, don't give proper pay slips, or who make false or misleading records and pay slips can face higher penalties. Read about the increased penalties below in [Serious contraventions](#).

#### For franchisors or holding companies:

You could be liable if your franchisees or subsidiaries don't follow workplace laws. Make sure you take reasonable steps to prevent breaches of workplace laws in your network.

Read about the changes to franchisor liability below in [Liability for franchisors and holding companies](#).

#### For employees:

If your employer requires you to use your own money unreasonably, or is making you give some of your pay back to them or another person, this could be unlawful. You can [get help resolving workplace issues](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem) ([www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem)). You can also [report a workplace concern anonymously](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously/default) ([www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously/default](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously/default)).

## Liability for franchisors and holding companies

Franchisors and holding companies (a company that has control over subsidiary companies) can be held responsible if their franchisee or subsidiary doesn't follow workplace laws.

This applies to franchisors that have a significant amount of influence or control over the business affairs of the franchisee.

Visit our [Help for franchises section \(www.fairwork.gov.au/find-help-for/franchises/default\)](http://www.fairwork.gov.au/find-help-for/franchises/default) for more information.

## Cashback schemes

There are clearer laws about asking employees and prospective employees to pay money.

Employers can't require an employee or prospective employee to spend their money, or give them (the employer or someone else) money, when:

- it's unreasonable
- the payment is for the employer's benefit, or the benefit of someone related to the employer
- for the prospective employee, it's connected to their potential employment.

This applies to any of the employee's money, not just the pay they get for working.

Read an example on our [Deducting pay and overpayments page \(www.fairwork.gov.au/pay/deducting-pay-and-overpayments\)](http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments).

## Serious contraventions

There are increased penalties for 'serious contraventions' of workplace laws. A serious contravention happens when:

- the person or business knew they were contravening an obligation under workplace law
- the contravention was part of a systematic pattern of conduct affecting one or more people.

Find out what breaches the higher penalties apply to on our [Litigation page \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/default\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/default).

## Reverse onus of proof

Employers who don't meet record-keeping or pay slip obligations and can't give a reasonable excuse will need to disprove allegations in wage claims made in a court. This is sometimes referred to as a 'reverse onus of proof.'

If an employee claims there is a breach and the employer didn't keep the right records, make those records available, or give them a pay slip, the employer needs to prove that they did pay the employee correctly or gave them the right entitlements.

Find out what breaches this applies to on our [Litigation page \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/default\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/default) and check [pay slip \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips) and [record-keeping \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping) obligations.

## Increased penalties

Employers can be ordered to pay:

- penalties for giving pay slips they know are false or misleading to their employees
- double the previous maximum penalty for failing to keep employee records or issue pay slips
- triple the previous maximum penalty for knowingly making or keeping false or misleading employee records.

New penalties also apply for people giving us information or documents they know are false or misleading.

Read more about penalties on our [www.fairwork.gov.au/about-us/compliance-and-enforcement/litigation](http://www.fairwork.gov.au/about-us/compliance-and-enforcement/litigation) Litigation page ([www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/default](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/default)) and check [pay slip \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips) and [record-keeping \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping) obligations.

You can also complete our [Record-keeping and pay slips online learning course \(www.fairwork.gov.au/tools-and-resources/online-learning-centre/record-keeping-pay-slips\)](http://www.fairwork.gov.au/tools-and-resources/online-learning-centre/record-keeping-pay-slips).

## Collecting evidence

The Fair Work Ombudsman can apply to the Administrative Appeals Tribunal for a 'FWO Notice' if it is reasonably believed a person or a business has information or documents that will help an investigation and is capable of giving evidence.

A FWO Notice is a written document. We can use it to require a person or business to:

- give information
- produce documents, or
- attend an interview to answer questions.

Visit our [Workplace investigations page](http://www.fairwork.gov.au/about-us/compliance-and-enforcement/proactive-investigations/default) ([www.fairwork.gov.au/about-us/compliance-and-enforcement/proactive-investigations/default](http://www.fairwork.gov.au/about-us/compliance-and-enforcement/proactive-investigations/default)) for more information including:

- who can apply to the Administrative Appeals Tribunal for a FWO Notice to be issued
- what suspected breaches the information or documents must relate to
- the penalties that apply for not complying with a FWO Notice.

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

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

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website 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 workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.