

## Changes to help protect vulnerable workers

This website news article was published on 15 September 2017. For up to date information about the changes made under the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, go to our [Protecting vulnerable workers reform page \(www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform\)](http://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform) .

On 15 September 2017 the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 took effect. It makes the following changes to the [Fair Work Act 2009](https://www.legislation.gov.au/Series/C2009A00028) (https://www.legislation.gov.au/Series/C2009A00028) :

- 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
- 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.

From 27 October 2017, the changes also mean that certain franchisors and holding companies 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).

Find out:

- [who the changes affect](#)
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### Who do the changes affect?

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 and record-keeping obligations \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping) . 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 [What are the changes?](#)

#### 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 [What are the changes?](#)

#### 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 ([www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues)) . You can also [report a workplace concern anonymously \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymously-report\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymously-report) .

Read about cashback schemes below in [What are the changes?](#)

## What are the changes?

### Liability for franchisors and holding companies

These changes apply from 27 October 2017.

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 about minimum entitlements, the National Employment Standards, awards, sham contracting, record-keeping and pay slips.

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

Franchisors or holding companies could be liable for breaches or underpayments if:

- they knew (or could have reasonably known) that a franchisee or subsidiary wasn't following workplace laws
- they didn't take reasonable steps to prevent it.

We are working with franchisors, their advocate and advisers and will have more information in our [Help for franchises section \(www.fairwork.gov.au/find-help-for/franchises\)](#) when the changes take effect.

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### 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.

This means that an employer can't:

- ask employees or prospective employees to pay money just to get the job, or to keep their job
- pay the employee the correct pay rate and then make them give some of it back
- apply unfair pressure to employees to spend their pay or own money.

#### Example: Cashback schemes

James works as a shop assistant. His employer, Danielle, pays him the full award pay rates under the Retail Award but has told him that he has to give some of his pay back to her each week in cash because other people would work for a lower rate. She tells James if he doesn't, he'll stop getting shifts. James is on a student visa and needs the work.

This is a cashback scheme and isn't allowed. Danielle is unreasonably making James give her money that isn't for his benefit. She could face penalties.

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

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### 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.

This applies to breaches of:

- the [National Employment Standards \(www.fairwork.gov.au/employee-entitlements/national-employment-standards\)](http://www.fairwork.gov.au/employee-entitlements/national-employment-standards)
- a [modern award \(www.fairwork.gov.au/awards-and-agreements/awards\)](http://www.fairwork.gov.au/awards-and-agreements/awards)
- an [enterprise agreement \(www.fairwork.gov.au/awards-and-agreements/agreements\)](http://www.fairwork.gov.au/awards-and-agreements/agreements)

- a workplace determination [☞](https://www.fwc.gov.au/disputes-at-work/industrial-action/resolving-issues-at-the-commission/workplace-determinations) (<https://www.fwc.gov.au/disputes-at-work/industrial-action/resolving-issues-at-the-commission/workplace-determinations>)
- a national minimum wage order [☞](https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders) (<https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders>)
- an equal remuneration wage order ([www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/gender-pay-equity](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/gender-pay-equity))
- method and frequency of paying wages ([www.fairwork.gov.au/pay/paying-wages](http://www.fairwork.gov.au/pay/paying-wages))
- the section that says an employer must not require employees to spend any of their money or pay back their wages if it unreasonable ([www.fairwork.gov.au/pay/deducting-pay-and-overpayments](http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments)) ('cashback schemes')
- guarantees of annual earnings ([www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions#employee-award-free](http://www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions#employee-award-free))
- record-keeping requirements ([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))
- pay slip requirements ([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)) .

If someone else was involved in the contravention, and knew it was a 'serious contravention', they could also face the higher penalties.

These changes apply now. Read about 'serious contraventions' on our [Litigations page \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation) .

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## 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.'

This applies to breaches of:

- the [National Employment Standards \(www.fairwork.gov.au/employee-entitlements/national-employment-standards\)](http://www.fairwork.gov.au/employee-entitlements/national-employment-standards)
- a modern award ([www.fairwork.gov.au/awards-and-agreements/awards](http://www.fairwork.gov.au/awards-and-agreements/awards))
- an enterprise agreement ([www.fairwork.gov.au/awards-and-agreements/agreements](http://www.fairwork.gov.au/awards-and-agreements/agreements))
- a workplace determination [☞](https://www.fwc.gov.au/disputes-at-work/industrial-action/resolving-issues-at-the-commission/workplace-determinations) (<https://www.fwc.gov.au/disputes-at-work/industrial-action/resolving-issues-at-the-commission/workplace-determinations>)
- a national minimum wage order [☞](https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders) (<https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders>)
- an equal remuneration wage order ([www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/gender-pay-equity](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/gender-pay-equity))
- method and frequency of paying wages ([www.fairwork.gov.au/pay/paying-wages](http://www.fairwork.gov.au/pay/paying-wages))
- the section that says an employer must not require employees to spend any of their money or pay back their wages if it unreasonable ([www.fairwork.gov.au/pay/deducting-pay-and-overpayments](http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments)) ('cashback schemes')

If an employee claims there is breach of one or more of the above obligations 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.

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

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## 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.

These changes apply now. Read more about penalties on our [Litigations page \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation) and check [pay slip and record-keeping obligations \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping) .

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## 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.

A FWO Notice can only be given in specific circumstances and the Fair Work Ombudsman, Natalie James, or specified senior executives she has authorised can apply to the Administrative Appeals Tribunal for one to be issued.

Penalties of up to \$126 000 (for an individual) or \$630 000 (for a company) can apply for not complying with a FWO Notice.

Find out more about [our role \(www.fairwork.gov.au/about-us/our-role\)](http://www.fairwork.gov.au/about-us/our-role) and how we gather evidence in [workplace investigations \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/workplace-investigations\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/workplace-investigations) . We'll have more information about FWO Notices soon.

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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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