

## Litigation

We can take a matter to court where there has been a contravention of Australian workplace laws. For example, if an employer is asked by us to pay their employees what they're owed and they don't pay the employee, we can take the employer to court.

Our decision to litigate will depend on whether we have enough evidence and whether it's in the public interest. [Our Compliance and Enforcement Policy \(DOCX 1.7MB\)](https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.docx.aspx) ([https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.docx.aspx](https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.pdf.aspx)) (PDF 1.9MB) (<https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.pdf.aspx>) talks about these factors in more detail.

If the employer is a company, we can take the company to court, but we can also take a person to court if they were 'involved in' the company's contravention. A person involved in the company's contravention may include:

- a company director
- a human resources manager or other manager
- an accountant
- a business involved in the [supply chain](http://www.fairwork.gov.au/find-help-for/contracting-labour-and-supply-chains) ([www.fairwork.gov.au/find-help-for/contracting-labour-and-supply-chains](http://www.fairwork.gov.au/find-help-for/contracting-labour-and-supply-chains)) .

## Court orders

If litigation is successful, a court may impose orders against a person found to have done the wrong thing. Those court orders may:

- make a person pay an amount of money as a penalty for not doing what the law says (up to \$12 600 per contravention for an individual and \$63 000 per contravention for companies)
- make a person pay a higher penalty for some 'serious contraventions' (up to \$126 000 per contravention for an individual and \$630 000 per contravention for companies)
- make an employer or other person pay an employee their outstanding entitlements (plus interest)
- require someone to do something (e.g. give an employee their job back) or undertake training or do an audit
- restrain someone from doing something (an injunction or interim injunction) for example, stop discriminating against an employee, or
- pay an employee compensation for loss suffered.

## Serious contraventions

A serious contravention happens when the court finds that:

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

The higher penalties for serious contraventions apply to breaches of:

- the [National Employment Standards](http://www.fairwork.gov.au/employee-entitlements/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](http://www.fairwork.gov.au/awards-and-agreements/awards) ([www.fairwork.gov.au/awards-and-agreements/awards](http://www.fairwork.gov.au/awards-and-agreements/awards))
- an [enterprise agreement](http://www.fairwork.gov.au/awards-and-agreements/agreements) ([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) <sup>1</sup> (<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) <sup>2</sup> (<https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders>)
- an [equal remuneration wage order](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/gender-pay-equity) ([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](http://www.fairwork.gov.au/pay/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](http://www.fairwork.gov.au/pay/deducting-pay-and-overpayments) ([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](http://www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions#employee-award-free) ([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](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)) and
- [pay slip requirements](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)) .

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

## When there are no records

If an employer doesn't meet their record-keeping or pay slip obligations, and can't give a reasonable excuse, they 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 in court proceedings relating 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 <sup>1</sup> \(https://www.fwc.gov.au/disputes-at-work/industrial-action/resolving-issues-at-the-commission/workplace-determinations\)](https://www.fwc.gov.au/disputes-at-work/industrial-action/resolving-issues-at-the-commission/workplace-determinations)
- a [national minimum wage order <sup>2</sup> \(https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders\)](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/paying-wages) ('cashback schemes')

If an employee makes a claim for 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.

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) for information about what records employers need to keep.

For information about our recent litigations, go to [Litigation outcomes \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/litigation-outcomes-2016-2017\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/litigation-outcomes-2016-2017) .

### You might also be interested in

- Our [Compliance and Enforcement Policy \(DOCX 1.7MB\) \(https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.docx.aspx\)](https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.docx.aspx) (PDF 1.9MB) (<https://www.fairwork.gov.au/ArticleDocuments/725/compliance-and-enforcement-policy.pdf.aspx>)
- Our [Legal professional privilege policy \(DOCX 56.5KB\) \(www.fairwork.gov.au/ArticleDocuments/725/Legal-professional-privilege-policy.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/725/Legal-professional-privilege-policy.docx.aspx)

**Page reference No: 2356**

### 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

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.