

## Deducting pay & overpayments



We've made it easier for you to find information about pay and entitlements under the Horticulture Industry Award.

For more tailored information about your Award, visit our [Horticulture page \(www.fairwork.gov.au/find-help-for/horticulture\)](http://www.fairwork.gov.au/find-help-for/horticulture) .

There are limited situations when an employer can:

- make a deduction from an employee's pay
- require an employee to pay money (eg. an overpayment).

Most of the time this isn't allowed - for example, 'cashback' schemes.

### Taking money out of an employee's pay

Taking money out of an employee's pay before it is paid to them is called a deduction.

An employer can only deduct money if:

- the employee agrees in writing and it's principally for their benefit
- it's allowed by a law, a court order, or by the Fair Work Commission, or
- it's allowed under the employee's award, or
- it's allowed under the employee's [registered agreement \(https://www.fairwork.gov.au/Dictionary.aspx?TermID=2034\)](https://www.fairwork.gov.au/Dictionary.aspx?TermID=2034) and the employee agrees to it.

Examples include salary sacrifice arrangements or additional payments into an employee's super fund.

An employee's written agreement must be genuine. They can't be forced to agree to a deduction.

Deductions have to be shown on the employee's pay slip and time and wages records.

### Deductions under an award or agreement

Some awards have a clause that allows an employer to deduct money from an employee's pay without their agreement.

If a registered agreement allows the deduction the employee must still agree to the deduction.

### Deductions that aren't allowed

An employer can't deduct money if:

- it benefits the employer directly or indirectly and is unreasonable in the circumstances, or
- the employee is under 18 years of age and their parent or guardian hasn't agreed in writing.

This is the case even if the deduction is made in accordance with an award, registered agreement or contract.

### **Example: Deducting money for till shortages**

Jenny works as a bar attendant in a tavern and is covered by the Hospitality Industry (General) Award 2010.

At the end of her shift her manager, Robert, counts the money for the day. He notices that the till is \$20 short. Robert usually takes money out of the bar attendant's wages to make up for the shortfall.

Even though the till is \$20 short, Robert can't deduct this money from Jenny's wages. This is because the award does not allow it, the deduction would not benefit Jenny and it would be unreasonable in the circumstances.

This cost will need to be met by Robert as the employer.

## **Reasonable deductions that benefit employers**

A deduction that benefits an employer and is made in accordance with an award, registered agreement or contract is reasonable in limited situations.

### **Notice of termination not given**

Most awards say that an employer can deduct up to one week's wages from an employee's pay if:

- the employee is over 18
- the employee hasn't given the right amount of notice under their award
- the deduction isn't unreasonable.

However, employers can only deduct from wages owed under the award. They can't deduct from other entitlements owed to the employee, such as accumulated leave or other overaward payments.

Check your [award \(www.fairwork.gov.au/awards-and-agreements/awards/list-of-awards\)](http://www.fairwork.gov.au/awards-and-agreements/awards/list-of-awards) for more information about withholding pay when minimum notice isn't given.

### **Business goods and services deductions**

A deduction is reasonable if an employer provides goods or services to an employee as part of their ordinary business. For example, deductions for health insurance fees made by an employer that operates as a health fund.

If the employee has to pay more than the general public for the goods or services, then the deduction isn't reasonable.

### **Private use of property deductions**

It's reasonable for an employer to make a deduction to recover costs directly incurred from an employee's private use of the employer's property. For example, the cost of:

- personal items bought by an employee with a work credit card
- personal calls on a work mobile phone
- petrol for the private use of a work car by an employee.

## **Overpayments**

Overpayments can happen when an employer mistakenly believes an employee is entitled to the pay or because of a payroll error.

Employers can't take money out of an employee's pay to fix up a mistake or overpayment. Instead, the employer and employee should discuss and agree on a repayment arrangement. If the employee agrees to repay the money, a written agreement has to be made and has to set out:

- the reason for the overpayment
- the amount of money overpaid
- the way repayments will be made (eg. cash, cheque or electronic transfer) and how often (this has to be reasonable).

If the repayment can't be agreed an employer should get legal advice.

### **Example: How to pay back an overpayment**

Tony was overpaid \$2000 over 3 years because of a payroll error. His award does not allow a deduction to be made when an employee is overpaid.

Tony and his employer, Alice, meet to discuss the overpayment. Tony agrees to repay the money and they come up with a solution.

Alice says Tony can choose how the money is paid back and the amount and frequency of the payments. Tony tells Alice that he'd prefer if \$20 was deducted from his pay each week until the \$2000 is repaid. This arrangement is put in writing and both sign.

This repayment is reasonable because Tony had a choice about how the money was paid back, and the amount and frequency of each payment.

A deduction can be made to get back an overpayment if it's allowed under a registered agreement, award, legislation or court order.

## **Requirements to spend or pay back money**

An employer isn't allowed to make an employee or prospective employee, spend their own money, or pay the employer (or someone else) money if:

- it's unreasonable
- the payment is for the employer's benefit, or the benefit of someone related to the employer.

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

This means that an employer can't:

- ask a prospective employee to pay money just to receive a job offer
- ask employees to pay money 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: Prospective employee making 'upfront' payments**

Helen is a civil engineer who is looking for an employer who will sponsor her on a visa. A prospective employer, Albert, says he will only employ her if she pays him an upfront payment of \$5000. Albert tells her that the payment will cover the cost of her sponsorship and compulsory company training.

Helen pays the \$5000 as she needs the job and the sponsorship. When she tries to contact Albert about starting employment, she cannot reach him.

Regardless of whether she ends up employed or not, requiring Helen to pay money in return for the job offer is unlawful.

## **Cashback schemes**

Making an employee give back some of their wages is sometimes referred to as a cashback scheme. If an employer breaches this workplace law, the money spent or paid by an employee will be treated like a deduction. The employee will be entitled to back pay from their employer, equal to the amount spent or paid. Amounts paid by prospective employees can also be recovered, whether or not they start work with the employer.

### **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.

## Best practice tips

- Check your award or agreement to find out when deductions can be made.
- Employers and employees should talk to each other if an overpayment has been made, then come to an agreement about repayment and put this in writing.

Source reference: Fair Work Act 2009 s.324-327 [☞](http://www.comlaw.gov.au/Series/C2009A00028) (<http://www.comlaw.gov.au/Series/C2009A00028>)

## Think a mistake might have been made?

Mistakes can happen. The best way to fix them usually starts with talking.

Check out our [Help resolving workplace issues \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default) section for practical advice on:

- figuring out if a mistake has been made
- talking to your employer or employee about fixing it
- getting help from us if you can't resolve it.

## What to do next

- Search [Awards \(www.fairwork.gov.au/awards-and-agreements/awards/default\)](http://www.fairwork.gov.au/awards-and-agreements/awards/default) to find the award that applies
- Search the [Fair Work Commission website ☞ \(https://www.fwc.gov.au/awards-and-agreements/agreements\)](https://www.fwc.gov.au/awards-and-agreements/agreements) for an agreement
- Download the [Pay slip template \(DOC 48KB\) \(www.fairwork.gov.au/ArticleDocuments/766/Pay-slip-template.doc.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/766/Pay-slip-template.doc.aspx)

## Help for small business

- Find tools, resources and information you might need on our [Small business page \(www.fairwork.gov.au/Find-help-for/Small-business/default\)](http://www.fairwork.gov.au/Find-help-for/Small-business/default) .

## You might also be interested in

- [Record-keeping and pay slips online course \(www.fairwork.gov.au/how-we-will-help/online-training/default\)](http://www.fairwork.gov.au/how-we-will-help/online-training/default)
- [Paying wages \(www.fairwork.gov.au/Pay/paying-wages\)](http://www.fairwork.gov.au/Pay/paying-wages)
- [Pay slips and record-keeping \(www.fairwork.gov.au/Pay/pay-slips-and-record-keeping/default\)](http://www.fairwork.gov.au/Pay/pay-slips-and-record-keeping/default)
- [Help resolving workplace issues \(www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default)

Page reference No: 1701

## 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.