

I think I've underpaid my employee

Annual Wage Review – 1 September 2021 changes

From 1 September 2021, minimum wages in the Retail Award are increasing. Updated minimum rates are now available in our pay tools. See our [Annual Wage Review 2021 \(www.fairwork.gov.au/about-us/news-and-media-releases/website-news/annual-wage-review-2021\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/annual-wage-review-2021) page for more information.

Employees have to be paid at least their minimum pay rates and entitlements.

Underpayments often happen because of a mistake or payroll error. Fixing it quickly and getting it right in future is important. Not following the law can lead to serious penalties.

Follow this step-by-step guide on how to fix an underpayment.

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How to fix an underpayment

Before you start - information you need

- Our [Pay and Conditions Tool \(https://calculate.fairwork.gov.au/findyouraward\)](https://calculate.fairwork.gov.au/findyouraward) can help you work out the right award (www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-not-sure-which-award-covers-my-business) and other minimum pay rates (www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-not-sure-what-to-pay-my-employees).
- Check your enterprise agreement or other registered agreement (if you have one) and your employment contracts.
- Pay slips and time and wages records for the whole underpayment period.
- Information about tax obligations and super guarantee contributions on the [Australian Taxation Office website \(https://www.ato.gov.au\)](https://www.ato.gov.au) .

Steps to take

1. Work out how long the employee was underpaid

- Using pay records, find out during which pay periods the underpayment happened. If you're not sure, you should check your records for the employee's whole employment period.
- Use the following steps to audit your pay records during the underpayment period.

2. Work out how much the employee was paid and what they were entitled to be paid

- Write down the total amount the employee was paid for the underpayment period.
- The total amount is the gross amount that your business had to pay the employee before tax was deducted, not the amount the employee was paid, for example, into their bank account.
- Calculate how much the employee should have been paid in total during the underpayment period. Calculate this based on the employee's pay rate, the number of hours the employee worked and when. Our [Pay and Conditions Tool \(https://calculate.fairwork.gov.au/findyouraward\)](https://calculate.fairwork.gov.au/findyouraward) can help to make these calculations.
- As well as their minimum hourly rate, check whether the employee's entitlements also include:

- penalty rates, overtime or allowances
 - leave payments or leave loading
 - any other entitlements in the employee's award, enterprise agreement or other registered agreement or their employment contract.
- If so, make sure the calculations relating to these entitlements are separated out in your calculations, so that you can easily see which entitlements have been underpaid and by how much.
 - You may also have to pay additional tax and superannuation that your business was supposed to have paid during that time. This may include payroll tax, which is collected by states and territories. For information about tax requirements and super guarantee contributions, visit the Australian Taxation Office website [ATO](https://www.ato.gov.au/) (<https://www.ato.gov.au/>). For more information on state and territory payroll tax, visit [business.gov.au – Payroll tax](https://www.business.gov.au/Finance/Taxation/Payroll-tax) (<https://www.business.gov.au/Finance/Taxation/Payroll-tax>).
3. Calculate how much the employee has been underpaid
- Work out the underpayment amount:
 - amount A = how much the employee should have been paid with respect to a particular entitlement
 - amount B = how much the employee was actually paid with respect to a particular entitlement
 - underpayment amount = amount A - amount B.
4. Discuss with the employee and confirm back payment arrangements
- Arrange a time to speak with your employee about the underpayment.
 - Explain what happened to cause the underpayment and how it has been fixed, including any calculations you've made to work out how much the employee was underpaid.
 - Pay the employee the underpayment amount as soon as possible as part of the next pay cycle or as a separate payment.
 - If the underpayment amount is more than the business can afford in a single payment, work out a payment plan with the employee. If the employee agrees to a payment plan you need to make a written agreement, signed by the employer and the employee, which includes:
 - the amount and frequency of the payments
 - the way payments will be made (for example cash, cheque or electronic funds transfer).
 - Record the back payment in the employee's pay records. Find out more about [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 \(www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping\)](http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping).
5. Keep up-to-date with future wage increases
- Be ready for future pay increases by checking the employment classifications in relevant awards and noting any other types of pay changes.
 - Get alerts from us about annual minimum wage increases and award changes when they happen by [subscribing to email updates. \(www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates\)](http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates)

Example: Employee underpaid for 3 weeks

Mai Lin started a new job 3 weeks ago. Mai Lin's employer, Ying, didn't know she had to pay Mai Lin at least the minimum pay rate under the relevant award.

Ying had paid Mai Lin \$16.00 per hour for 30 hours of work each week. Over 3 weeks she paid her \$1440.00 (3 weeks x 30 hours x \$16.00).

Mai Lin used the Pay and Conditions Tool to work out that she should have been paid at least \$17.50 per hour. Over the past 3 weeks she should have been paid \$1575.00 instead (3 weeks x 30 hours x \$17.50). Mai Lin told Ying and showed her the calculations.

To work out how much Mai Lin had been underpaid, Ying worked out the difference between what Mai Lin should have been paid (amount A = \$1575.00) and what she was actually paid (amount B = \$1440.00):

(amount A) \$1575.00 - (amount B) \$1440.00 = (underpayment amount) \$135.00

Mai Lin had been underpaid \$135.00 over 3 weeks. Ying added this amount to Mai Lin's next pay and recorded it on her pay slip. She let Mai Lin know that she has back paid her and made sure Mai Lin's future pay was based on the correct minimum pay rate.

Best practice tip

Set a reminder for when employees are likely to need a pay increase, such as a junior employee's birthday or yearly apprentice

progression. This will help prevent future underpayments.

The National Minimum Wage and minimum rates of pay in awards are reviewed every year by the Fair Work Commission, and any change usually starts from 1 July every year.

If you need more support

If your business doesn't have a payroll officer, you may decide to get help from an accountant to calculate underpayments. You may also decide to seek independent advice from a lawyer or another professional about your business's obligations.

To ask for our help with workplace information [log in or register for My account \(www.fairwork.gov.au/my-account/register.aspx\)](#) and:

- use web chat to ask a quick question during business hours
- submit an enquiry for help with more complex questions.

Compliance and enforcement

In some situations, it's best if you report an underpayment to us as soon as possible. These situations include where the underpayment has been happening over a long period or is extensive in quantity. To report an underpayment, you can [contact us \(www.fairwork.gov.au/contact-us/default\)](#).

If we become aware of an underpayment arising from non-compliance with Australian workplace laws, we may start an investigation or an inquiry or take other steps, even if the affected employees have been backpaid. Find out more information about [Our role \(www.fairwork.gov.au/about-us/our-role/default\)](#).

To find out more about our approach to non-compliance with Australian workplace laws, including self-reported non-compliance, read our Compliance and enforcement policy on [Our policies \(www.fairwork.gov.au/about-us/our-policies/our-policies\)](#) page.

Other common workplace problems

- [I'm not sure what to pay my employees \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-not-sure-what-to-pay-my-employees\)](#)
- [I'm not sure which award covers my business \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-not-sure-which-award-covers-my-business\)](#)
- [My employee isn't doing their job properly \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/my-employee-isnt-doing-their-job-properly\)](#)
- [My employee left without giving notice \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/my-employee-left-without-giving-notice\)](#)

Tools and resources

- [An employer's guide to resolving workplace issues \(DOCX 397.1KB\) \(www.fairwork.gov.au/ArticleDocuments/712/an-employers-guide-to-resolving-workplace-issues.docx.aspx\)](#) (PDF 470.3KB) ([www.fairwork.gov.au/ArticleDocuments/712/an-employers-guide-to-resolving-workplace-issues.pdf.aspx](#))
- [Pay Calculator \(https://calculate.fairwork.gov.au/findyouraward\)](https://calculate.fairwork.gov.au/findyouraward)
- [Subscribe to email updates \(www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates\)](#)
- [My account \(www.fairwork.gov.au/my-account/register.aspx\)](#)
- [Effective dispute resolution best practice guide \(www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution\)](#)
- [Difficult conversations in the workplace – manager course \(www.fairwork.gov.au/tools-and-resources/online-learning-centre/difficult-conversations-in-the-workplace-manager-course\)](#)
- [Workplace laws for business advisers course \(www.fairwork.gov.au/tools-and-resources/online-learning-centre/workplace-laws-for-business-advisers\)](#)

Related information

- [Help for small business \(www.fairwork.gov.au/small-business-showcase/help-for-small-business\)](#)
- [Minimum wages \(www.fairwork.gov.au/pay/minimum-wages/default\)](#)
- [Australian Taxation Office website \(https://www.ato.gov.au/\)](https://www.ato.gov.au/) 

Contact us

Fair Work Online: 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.