

Legal action in the small claims court

Taking legal action in the small claims court is a good option when a workplace dispute can't be resolved voluntarily. Find out what's involved when you do this.

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What is small claims?

You can take your own legal action at any time. We have videos and information to support you if you are considering this option.

In the small claims court, your claim is heard by a judge, with no jury. The judge can make a legally binding decision based on the evidence presented.

The applicant is the person who applies to the court to have the matter heard. 'The applicant' in a small claims action is an employee. The employer is 'the respondent'.

There are two types of small claims actions. One is focused on recovering amounts of money less than \$20,000 and the other is focused on resolving specific disputes about [casual conversion \(www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee\)](http://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee). The benefits in taking small claims action include:

- it is faster and more informal than other court proceedings
- it's usually less expensive as lawyers aren't normally needed. You can represent yourself.

The small claims process is available if:

- the claim is for less than \$20,000 or is about specific disputes regarding [casual conversion \(www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee\)](http://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee)
- the entitlement being claimed is covered under Australian workplace laws
- the statutory time limit has not expired (usually 6 years from when the entitlement was due to be paid).

A court can make a legally binding decision based on the evidence presented to it.

Disputes about casual conversion

In some circumstances, the Federal Circuit Court can help with disputes about casual conversion. The Court can help with disputes about whether:

- a casual employee meets the requirements for their employer to make an offer for them to become a permanent employee
- the employer has reasonable grounds not to make an offer or refuse a request for casual conversion
- a casual employee meets the requirements to make a request to their employer for casual conversion.

The Federal Circuit Court can make broad types of orders to resolve a dispute. For example, the Federal Circuit Court can make an order preventing an employer from relying on a particular ground to refuse to make an offer or to refuse a request, or can make an order requiring an employer to consider whether they must make an offer or accept a request for conversion. State or Territory magistrates or local courts can accept a small claim about a casual conversion dispute, but they can only make orders for the payment of an amount of money.

If you've already lodged a request for assistance with us and you're thinking of taking legal action, let us know as soon as possible.

Small claims guide for employers and employees

Whether you're the applicant or respondent, you'll need to know the process and what to do at each step.

On Friday 26 March 2021, sections of the Fair Work Act relating to casual employees were amended, including the addition of a new section for small claims processes for certain disputes about casual conversion. These changes came into effect on Saturday 27 March 2021.

We've completed our review of the small claims guide for employers and employees available on this page and updated the information in the guide.

Read our summary of the changes: [Changes to casual employment – industrial relations reforms \(www.fairwork.gov.au/about-us/news-and-media-releases/website-news/reforms\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/reforms) .

Use our step-by-step guides to help you understand the small claims court if you're:

- [applying for small claims \(DOCX 36.4KB\)](http://www.fairwork.gov.au/ArticleDocuments/712/guide-to-applying-for-small-claims.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/712/guide-to-applying-for-small-claims.docx.aspx) (PDF 289.3KB) (www.fairwork.gov.au/ArticleDocuments/712/guide-to-applying-for-small-claims.pdf.aspx) or
- [responding to small claims \(DOCX 36.8KB\)](http://www.fairwork.gov.au/ArticleDocuments/712/guide-to-responding-to-small-claims.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/712/guide-to-responding-to-small-claims.docx.aspx) (PDF 277.2KB) (www.fairwork.gov.au/ArticleDocuments/712/guide-to-responding-to-small-claims.pdf.aspx) .

You can also watch our 6-part video series on the small claims process, starting with an 'Introduction to small claims'. The series shows the main steps in applying for or responding to a small claim. Each video is less than 2 minutes long.

- [Video: Introduction to small claims](https://youtu.be/JKswlWHTfZI) [↗](https://youtu.be/JKswlWHTfZI) (<https://youtu.be/JKswlWHTfZI>)
- [Video: Do you have a small claim?](https://youtu.be/GiQV2YCLXfw) [↗](https://youtu.be/GiQV2YCLXfw) (<https://youtu.be/GiQV2YCLXfw>)
- [Video: Preparing for court](https://youtu.be/MGyKN1IGJwc) [↗](https://youtu.be/MGyKN1IGJwc) (<https://youtu.be/MGyKN1IGJwc>)
- [Video: Inside the courtroom](https://youtu.be/p7tLQMD6j4I) [↗](https://youtu.be/p7tLQMD6j4I) (<https://youtu.be/p7tLQMD6j4I>)
- [Video: Your day in court](https://youtu.be/pAYEQujjNe8) [↗](https://youtu.be/pAYEQujjNe8) (<https://youtu.be/pAYEQujjNe8>)
- [Video: After the hearing](https://youtu.be/fLiZgUgmVPo) [↗](https://youtu.be/fLiZgUgmVPo) (<https://youtu.be/fLiZgUgmVPo>)

Court forms and legal resources

For court forms and further information about taking a small claims action contact the [Federal Circuit Court](http://www.federalcircuitcourt.gov.au/) [↗](http://www.federalcircuitcourt.gov.au/) (<http://www.federalcircuitcourt.gov.au/>) or the magistrates' court in your state or territory:

- [Australian Capital Territory](http://www.courts.act.gov.au/magistrates/) [↗](http://www.courts.act.gov.au/magistrates/) (<http://www.courts.act.gov.au/magistrates/>)
- [New South Wales](http://www.localcourt.justice.nsw.gov.au/) [↗](http://www.localcourt.justice.nsw.gov.au/) (<http://www.localcourt.justice.nsw.gov.au/>)
- [Northern Territory](https://localcourt.nt.gov.au/) [↗](https://localcourt.nt.gov.au/) (<https://localcourt.nt.gov.au/>)
- [Queensland](https://www.qirc.qld.gov.au/wage-recovery-and-long-service-leave) [↗](https://www.qirc.qld.gov.au/wage-recovery-and-long-service-leave) (<https://www.qirc.qld.gov.au/wage-recovery-and-long-service-leave>)
- [South Australia](http://www.saet.sa.gov.au/) [↗](http://www.saet.sa.gov.au/) (<http://www.saet.sa.gov.au/>)
- [Tasmania](http://www.magistratescourt.tas.gov.au/) [↗](http://www.magistratescourt.tas.gov.au/) (<http://www.magistratescourt.tas.gov.au/>)
- [Victoria](https://www.mcv.vic.gov.au/) [↗](https://www.mcv.vic.gov.au/) (<https://www.mcv.vic.gov.au/>)
- [Western Australia](http://www.imc.wa.gov.au/) [↗](http://www.imc.wa.gov.au/) (<http://www.imc.wa.gov.au/>)

To take legal action about breaches of an employment contract, or for a claim that's for more than \$20,000, you should seek independent legal advice. Find out [where to get legal advice \(www.fairwork.gov.au/website-information/related-sites#legal\)](http://www.fairwork.gov.au/website-information/related-sites#legal) .

Best practice tip

You can make a small claims application any time from when the entitlement was due until 6 years after that time. But it's best you don't delay making a small claims application. As time passes, it can become harder for you to contact your employer and gather the required evidence.

Example: Employee taking a small claim to court

Breeana applied to the small claims court when she and her employer couldn't agree she had been underpaid. She read our step-by-step guide to applying for small claims and saw that she met the criteria for the small claims court. Breeana thought she needed support so she asked her cousin, who was good with calculations and documents, to help her.

Breeana (the applicant) and her cousin prepared a folder of evidence. They gathered together emails, pay slips, calculations, hours worked that Breeana had recorded on the [Record My Hours app](http://www.fairwork.gov.au/tools-and-resources/record-my-hours-app) (www.fairwork.gov.au/tools-and-resources/record-my-hours-app) , and other documents to back up Breeana's claim of \$3000 underpayment. Breeana sent copies of these to the court before her hearing date. She also 'served' copies of the court papers to her employer so he knew about the court date

well ahead of time and could prepare a response.

On the hearing date, her employer (the respondent) didn't show up to court. Breeana, accompanied to court by her cousin, answered the judge's questions and discussed the evidence.

The judge considered the evidence Breeana provided and found in Breeana's favour. The employer was ordered to backpay Breeana the full amount by a specified date. As the judge's decision is legally binding, Breeana's employer had to pay the amounts the court ordered by the due date or risk additional action by the court.

Example: Employer responding to action in the small claims court

Yolanda owned a nail salon. She was served court papers when an employee she was having a dispute with took her claim to the small claims court.

The employee claimed she wasn't paid for all the hours she worked. She had recorded her hours in a diary. Yolanda had told the employee these were hours the employee had volunteered to stay for training. The employee disagreed. She said Yolanda had told her to stay back those hours and do work.

Yolanda read the court papers and gathered her own evidence to prepare for the court hearing.

At the hearing, the judge heard from the employee and then Yolanda was able to speak. The judge said that, by law, the hours the employee worked should have been paid even if they were for training. He got agreement from Yolanda and the employee to attend court-appointed mediation to discuss payment for the training hours.

Tools and resources

- [Guide to Small claims for employers and employees \(DOCX 150.7KB\) \(www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.docx.aspx)
- [Guide to Small claims for employers and employees \(PDF 654.9KB\) \(www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx)
- [Consultation and cooperation in the workplace best practice guide \(www.fairwork.gov.au/tools-and-resources/best-practice-guides/consultation-and-cooperation-in-the-workplace\)](http://www.fairwork.gov.au/tools-and-resources/best-practice-guides/consultation-and-cooperation-in-the-workplace)
- [Effective dispute resolution best practice guide \(www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution\)](http://www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution)

Related information

- [Fixing a workplace problem \(www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default\)](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default)
- [Small business page \(www.fairwork.gov.au/find-help-for/small-business/default\)](http://www.fairwork.gov.au/find-help-for/small-business/default)

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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

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