

## Legal action in the small claims court

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

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### Introduction to the small claims court

The small claims court is where you can represent yourself to take your own legal action and resolve certain workplace disputes. You don't need a lawyer.

The 'applicant' (the person who applies to the court to have the matter heard) is the employee and the 'respondent' is the employer.

At the small claims court, you can resolve:

- [claims about underpayments](#) that are for \$20,000 or less
- certain disputes about [casual employment disputes](#).

The entitlements being claimed need to be covered by Australian workplace laws and within the statutory time limit (usually 6 years from when the entitlement was meant to be paid).

### Evidence in the small claims court

When making a small claims application, you'll need to make sure that you have evidence to back up your claim. For example, evidence for an underpayment claim could be:

- emails
- pay slips
- pay rate calculations
- hours recorded in a diary
- any other documents to back up your underpayment claim.

The applicant then needs to 'serve' the respondent with copies of all of the court papers (including the evidence) so they know about the court date well ahead of time and can prepare a response.

#### Best practice tip

You can make a small claims application any time from when the entitlement was due until 6 years after that time. It's best to make a small claims application as soon as possible. As time passes, it can become harder for you to contact your employer and gather the required evidence.

In the small claims court, your claim is considered by a judge with no jury. The judge can make a legally binding decision based on the evidence presented. This is called an 'order' or 'court order'.

The benefits of making a small claims application include:

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

We have a [video series](#) to guide you through the small claims process.

If you've already lodged an enquiry with us and you're thinking of taking your own legal action, let us know as soon as possible.

## Claims about underpayments

The small claims process in the Federal Circuit Court and in state or territory magistrates and local courts can deal with claims about the payment of money. For example, the claim could be about not being paid:

- your base rate of pay
- penalties
- allowances, or
- leave entitlements.

Claims can also be about unlawful deductions from your pay.

The claim needs to be:

- for \$20,000 or less (the Court cannot award more than this amount)
- for entitlements covered by Australian workplace laws
- made within the statutory time limit (usually 6 years from when the entitlement was meant to be paid).

### 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 ([www.fairwork.gov.au/tools-and-resources/record-my-hours-app](http://www.fairwork.gov.au/tools-and-resources/record-my-hours-app)), and other documents to back up Breeana's underpayment claim of \$3,000. Breeana sent copies of these to the court before her hearing date. She also served copies of the court papers on 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.

### 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 made an application 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 recommended that Yolanda and the employee attend court-appointed mediation to discuss payment for the training hours.

## Casual employment disputes

The small claims process in the Federal Circuit Court and in state or territory magistrates and local courts can be used for the following disputes about casual conversion:

- whether an employer has to offer their casual employee permanent employment
- if an employer has reasonable grounds to not make an offer or refuse an employee's request to become permanent
- whether a casual employee has the right to request casual conversion.

The small claims court can make orders to resolve disputes. For example, they may make orders:

- stopping an employer from using particular reasons when refusing to make an offer or refusing a request for conversion, or

- requiring an employer to consider whether they have to make an offer or accept a request for conversion.

## 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.

Use our simple step-by-step guides to help you understand the small claims court:

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

You can also read our detailed [Guide to Small claims for employers and employees \(DOCX 150.7KB\) \(www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.docx.aspx\)](#) (PDF 654.9KB) ([www.fairwork.gov.au/ArticleDocuments/712/small-claims-guide.pdf.aspx](#)) .

## Small claims guide video series

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) 
- [Video: Do you have a small claim? \(https://youtu.be/GiQV2YCLXfw\)](https://youtu.be/GiQV2YCLXfw) 
- [Video: Preparing for court \(https://youtu.be/MGyKN1IGJwc\)](https://youtu.be/MGyKN1IGJwc) 
- [Video: Inside the courtroom \(https://youtu.be/p7tLQMD6j4I\)](https://youtu.be/p7tLQMD6j4I) 
- [Video: Your day in court \(https://youtu.be/pAYEQujjNe8\)](https://youtu.be/pAYEQujjNe8) 
- [Video: After the hearing \(https://youtu.be/flIZgUgmVPo\)](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 \(http://www.federalcircuit-court.gov.au/\)](http://www.federalcircuit-court.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/) 
- [New South Wales \(http://www.localcourt.justice.nsw.gov.au/\)](http://www.localcourt.justice.nsw.gov.au/) 
- [Northern Territory \(https://localcourt.nt.gov.au/\)](https://localcourt.nt.gov.au/) 
- [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) 
- [South Australia \(http://www.saet.sa.gov.au/\)](http://www.saet.sa.gov.au/) 
- [Tasmania \(http://www.magistratescourt.tas.gov.au/\)](http://www.magistratescourt.tas.gov.au/) 
- [Victoria \(https://www.mcv.vic.gov.au/\)](https://www.mcv.vic.gov.au/) 
- [Western Australia \(http://www.imc.wa.gov.au/\)](http://www.imc.wa.gov.au/) 

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/related-sites#legal-organisations](http://www.fairwork.gov.au/website-information/related-sites/related-sites#legal-organisations)) .

## 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)
- [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)

## 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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