

An employee's guide to resolving workplace issues



This guide provides employees with step by step practical guidance on how to resolve a workplace issue with their employer. You can find more tips and hints on resolving workplace issues at www.fairwork.gov.au/help



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Why use this Guide?

This is a guide for employees dealing with workplace issues.

The Fair Work Ombudsman helps employees and employers to work together to resolve workplace issues. We don't represent either party. We want to make sure everyone is following workplace laws and can resolve any problems with minimal expense, time and stress. If you request our assistance, and there appears to be no exploitation or deliberate non-compliance, we will help you to resolve the issues directly with your boss.

Most workplace issues occur because people don't know what the law is, or because communication has broken down. The most effective way for you to resolve a workplace issue is to find out what the law is and then work with your boss to fix the problem.

This guide will take you through a simple four-step process to help you resolve workplace issues with your boss.

Step 1: Check the law



Step 2: Talk to your boss



Step 3: Put it in writing



Step 4: Take further action





Step 1: Check the law

If you think you're not getting the right pay or entitlements, the first thing you need to do is check what your rights are.

In Australia there are rules about minimum pay rates and entitlements like leave. These rules are set out in the National Employment Standards (NES) and in your award or enterprise agreement. Your employment contract cannot take away these minimum entitlements.

Minimum pay rates and entitlements can differ depending on the award or enterprise agreement that applies to you, the type of work you do, whether you're permanent or casual and your age.

Our Pay and Conditions Tool (PACT) at www.fairwork.gov.au/pay will help you find the correct award and calculate your pay, penalties, allowances and leave entitlements. For information about your minimum employee entitlements visit www.fairwork.gov.au

If you need information about enterprise agreements, superannuation, tax, workplace health and safety or bullying and harassment, see the 'Links and resources' section in the back of this guide for a list of contacts that can help you.

My account

Register for an online account with us at www.fairwork.gov.au/login and you'll be able to:

- make enquiries online for priority support
- save results from our Pay and Conditions Tool (PACT)
- save your favourite pages from www.fairwork.gov.au to read or refer to later
- get information tailored to your needs.

Example

Kim got a job as a part-time barista at her local café. Her friend Rachel also works as a barista at a café on the same street. Kim finds out that she is being paid less than Rachel. She doesn't understand why, since they're doing the same work.

Rather than going straight to her boss to complain, Kim decides to check her pay rate using the Pay and Conditions Tool at www.fairwork.gov.au/pay. It's a good thing she did, because she found out that her boss is paying her the right amount. It turns out Rachel gets more because she's a casual employee. Casuals get paid more because they get an extra loading instead of entitlements like annual leave and paid sick leave.

If you find there is a problem, and you want to raise it with your boss, it's a good idea to gather some supporting information, so you can show them why you think there is an issue. Your pay slip is a good place to start.

Pay slips

Pay slips need to be given to you within 1 working day of pay day, even if you are on leave.

If you don't get a pay slip, you should ask your boss for one. You should also write down when you worked and how much you were paid until you start getting pay slips. You can find more information on pay slips at www.fairwork.gov.au/payslips

Tips for gathering supporting information

If your issue relates to your pay and entitlements you may already have most of the information you need from your pay slips. But if you don't get pay slips, or if the information on your pay slips is incorrect, you might also need:

- payment summaries, bank statements or other financial records showing what you've been paid
- diary entries of hours worked, significant events, conversations and meetings
- rosters, timesheets, leave requests and approvals, position descriptions
- printed information from www.fairwork.gov.au to give to your boss
- details of what you've been paid and calculations of what you think is owed.

There may be other issues that you need to raise with your boss. For example, if you have concerns about rostering, workplace facilities or problems with other staff, you may need to provide other information, like details of conversations you have had with other staff or your manager. Providing your boss with this information makes it easier for them to understand and resolve your concerns.



Step 2: Talk to your boss

The best way to handle a workplace problem is to deal with it directly. Although this can seem hard, talking about issues when they come up will help you to:

- maintain a positive and open relationship with your boss
- understand and receive your full entitlements
- provide suggestions about how the issue can be resolved
- avoid stressful, costly and lengthy disputes later.

Some people avoid difficult conversations because they make them feel uncomfortable, but most workplace problems won't go away by themselves.

If there is a problem at work, raise it promptly. Remember, your boss may not even be aware that there is a problem, and resolving it quickly means both of you can get on with the job. Be specific about the issues and provide your boss with the information you have gathered.

Example

Anne is planning a holiday and decides to check how much annual leave she has accrued. She finds her annual leave balance is less than she thought. Before complaining, she emails her boss to ask for a copy of her leave records. After receiving them, she notices an error. They show that she had taken 3 weeks leave earlier this year when in fact she only took 2 weeks.

Anne organises a time to speak with her boss. She shows him the leave records and her leave request from earlier this year. Her boss apologises for the error and agrees to fix her leave balance. By speaking to her boss in a polite and professional manner about the issue, Anne was able to resolve the problem quickly.

Need help having a difficult conversation with your boss?

Our Online Learning Centre has a free online course to help you prepare for a difficult conversation with your boss. The course will give you practical advice on how to talk to your boss about things like getting the right pay, taking leave and changing your hours at work. You can access the course from www.fairwork.gov.au/learning

You might feel uncomfortable speaking to your boss because you're not sure how they'll respond, or because you feel your boss is part of the problem. If so, consider if there is someone else in the business you can talk to, such as another senior person or a human resources officer.

Example

Sam is a hairdresser and has recently started work with a new employer. Sam is enjoying his new job, but he's concerned because he isn't getting regular pay slips. Sam knows that he should get a pay slip within 1 day of pay day.

Sam is nervous about speaking to his boss, so he visits www.fairwork.gov.au/learning and does the 'Difficult Conversations in the Workplace – employee course'. The course helps him practise what to say to his boss, and makes him feel more confident about approaching her.

The next day he meets with his boss and politely explains the pay slip issue. He also shows his boss the pay slip information he found at www.fairwork.gov.au/payslips. Sam's boss apologises and says she didn't know that pay slips had to be provided after each pay. Sam now receives his pay slips within 1 day of being paid.

If you and your boss are committed to finding a solution but you can't agree on a way forward, you might want to ask them if they would consider doing a voluntary mediation. You can find out more about mediation at Step 4.



Step 3: Put it in writing

If you've tried talking to your boss and you haven't been able to solve the problem, the next step is to put your concerns in writing. This is a good way to clearly identify the issues and what type of response you want.

Putting your concerns in writing can clarify the issues that still need to be resolved. Be calm and careful not to accuse your boss of something, as this can often make things worse. Some bosses are also more likely to take a matter seriously if you put it in writing.

It's okay to use email to write to your boss – you should use the email address they use for their business unless they ask you to use a different one. You can also hand a letter to your boss at work if you prefer, but make sure you keep a copy.

Example

Jack has been working as an apprentice at the local panel beaters for 2 years. He recently completed the assessments to move onto the third year of his apprenticeship.

Jack spoke to his boss to let him know that he has progressed in his apprenticeship and that his pay rate would need to change. His boss told him that he will check the rate and get back to him. After two weeks, Jack checks his pay slip and notices his pay rate hasn't gone up. When he asks his boss about it, his boss says he is too busy right now.

Since Jack has already tried to speak with his boss, without success, he decides to put his concerns in writing. Jack writes a letter clearly outlining that he is concerned about the delay in updating his pay. He also includes information from www.fairwork.gov.au/pay about what his new pay rate should be.

A few days after Jack gave his boss the letter he is called into his boss's office. His boss tells him that he realises this issue is important to Jack and appreciates the effort Jack went to in getting the pay rates from the Fair Work Ombudsman's website.

Jack's next pay slip shows the new pay rate and some back pay owed as a result of the delay.

Need help writing to your boss?

If you need help writing to your boss, use the example letter attached to this guide (**Attachment 1**).

Remember, you'll need to change the letter to reflect your circumstances.

Tips for writing to your boss

Remember to:

- be calm and polite - being aggressive or rude won't help you solve the problem
- clearly outline what the problem is and any entitlements that you believe are owed
- refer to the conversation you had in Step 2, and any other attempts you have made to resolve the issue
- include the supporting information you gathered in Step 1, such as copies of pay slips, leave records or information you found at www.fairwork.gov.au
- give your boss a reasonable amount of time to respond
- keep a copy of the letter or email.



Step 4: Take further action

Dealing directly with your boss is the most effective way for you to resolve a workplace issue. However, if you have taken the steps outlined in this guide and you haven't been able to resolve the issue, you will need to consider your options.

If you want to pursue the matter further, the next step will be asking a third party to assist.

A third party might be a mediator, a union, a solicitor or a court. The approach you choose will depend on the issue you're trying to resolve. You might also find that you need to use more than one approach to resolve things.

Gathering evidence

If you need to use a third party it's a good idea to gather any records you need to support your claim. Your boss is legally required to keep records of things about your employment, including records about how much you've been paid, and the hours you've worked.

You can ask your boss for a copy of these records.

If you need help making this request, refer to the example request for records attached to this guide (Attachment 2).

Remember, you'll need to change the request to reflect your situation and the records you need.

Tips for gathering evidence

Remember to:

- make the request in writing (e.g. letter or email) and keep a copy
- be clear about what you are requesting (e.g. pay slips, timesheets) and the time period you require
- focus on gathering information - don't raise issues that aren't relevant to the request
- be respectful – being rude or aggressive won't help you get the records or solve the problem
- provide a reasonable time for the response (usually 14 days plus any postage time)
- if you don't hear back, follow up by speaking to them at work or with a phone call or email – your boss may have overlooked your request or need more time.

Mediation

If you haven't been able to resolve the workplace issue, an accredited mediator may be able to help you and your boss negotiate with each other to resolve it. Mediation is a voluntary process, so both you and your boss have to agree to mediate.

Mediators don't take sides, give advice or make a decision about who's right or wrong. They help you to work through the issues and reach a solution that is fair, reasonable and acceptable to everyone.

Some community organisations and private dispute resolution providers offer free or low cost mediation services. To find information about mediation providers in your state or territory, go to www.accesstojustice.gov.au

You can also find information about our mediation service at www.fairwork.gov.au/mediation

Unions

Unions represent employees in the workplace. Unions can provide their members with information, advice and support. If you're a member of a union you may wish to contact them for assistance.

For information about union membership and advice and assistance on workplace issues contact the Australian Council of Trade Unions at www.australianunions.org.au

Legal advice

You can seek legal advice from a solicitor or community legal centre at any time. They may be able to assist you with a range of actions, including writing a formal letter of demand.

To find a solicitor, visit the law institute or law society within your state or territory. The details of these organisations can be found at www.accesstojustice.gov.au. To find a community legal centre go to the www.naclc.org.au

Small claims action

Small claims is a process where you take your complaint to a court to recover the money owed to you.

A small claims action is faster, cheaper and more informal than a normal court case. You don't need to be an expert and lawyers aren't usually involved. You can use the small claims process if you're trying to recover \$20,000 or less (if you believe you're owed more than this, you should seek legal advice about other court processes).

Before putting in a small claims application, it's a good idea to write again to the employer to remind them of your concerns and let them know that you're considering legal action.

For more information on small claims, see www.fairwork.gov.au/smallclaims



Links and resources:

To help you out

Enterprise agreements

Enterprise agreements are collective agreements made at an enterprise level between employers and employees about terms and conditions of employment. The Fair Work Commission (FWC) can help you deal with disputes about how the agreement applies.

You can check if you are covered by an enterprise agreement by visiting the Fair Work Commission's website at www.fwc.gov.au/awards-and-agreements/agreements/find-agreement

Workplace health & safety

Each state and territory has a local workplace health and safety body, which regulates and investigates breaches of laws about workplace health and safety, including bullying and harassment. You can find the contact details for these organisations at www.fairwork.gov.au/links

Tax & superannuation

In most cases, your employer must deduct tax from your wages. They are also required to pay superannuation for you if you earn over a certain amount each month.

The Australian Taxation Office (ATO) can provide you with information about these entitlements at www.ato.gov.au

Bullying

Everyone has the right not to be bullied at work.

If you are dealing with a workplace issue about bullying, the Fair Work Commission can help. For more information, go to www.fwc.gov.au/bullying

Personal support

Dealing with workplace issues can cause stress. If you're having trouble coping, support is available from www.beyondblue.org.au and www.lifeline.org.au



Checklist

Resolving your workplace issue



Check the law

I have:

- checked my pay, penalties, allowances and leave entitlements at www.fairwork.gov.au/pay
- signed up for My account at www.fairwork.gov.au/login
- printed or saved relevant information from www.fairwork.gov.au
- worked out what I have been paid and what I think I'm owed



Talk to your boss

I have:

- done the online course 'Difficult conversations in the workplace - employee course' at www.fairwork.gov.au/learning
- arranged a mutually convenient time to discuss the issue
- got supporting evidence to help explain the issue to my boss



Put it in writing

I have:

- used professional, respectful and non-threatening language
- clearly outlined the issue and how I think it can be fixed
- kept a copy of the letter or email



Take further action

I have (some may not apply):

- gathered the records needed to support my claim
- read the information at www.fairwork.gov.au/mediation and considered participating in a voluntary mediation
- read the information at www.fairwork.gov.au/smallclaims and considered taking a small claims action
- written to my boss again telling them I'm considering taking legal action if the issue is not resolved in a reasonable timeframe
- got assistance from third party such as a union or a solicitor



Attachment 1

Example letter to employer

You can refer to this example to help you write to your employer about workplace issues. If you need more information visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

Jones Self Storage Pty Ltd

10 Summer Circuit

Clifton Hill NSW 2998

24 November 2015

Dear Mr Jones

Thank you for meeting with me on 10 November 2015 to talk about my pay.

As discussed, the pay rate I'm receiving is below the award minimum for my job. I have checked my most recent pay slip and the issues we discussed have not been fixed.

I have checked the Fair Work Ombudsman's website and my job is covered by the Storage Services and Wholesale Award 2010 (the Award). Under the Award, I believe my duties come under the 'Storeworker grade 2' classification. The Award pay rate for a Storeworker grade 2 with my level of experience is \$19.10 per hour. I'm currently receiving only \$18.63 per hour.

As this pay rate applied from July 2015, I have calculated that I am owed \$374.74 in back-pay.

I have attached to this letter the following documents that show how I have calculated this:

- a pay slip showing my current pay rate
- the current pay rate for a Storeworker grade 2 that I obtained from www.fairwork.gov.au
- my back-pay calculations.

You can find a copy of the Award and information about pay and other employee entitlements on the Fair Work Ombudsman's website at www.fairwork.gov.au or by calling the Fair Work Infoline on 13 13 94.

I ask that you please increase my pay rate and also back-pay the amount owed as soon as practicable.

I am happy to discuss this further with you or you can respond by email at jack.frost@homeemail.com.au.

Yours sincerely

Jack Frost



Attachment 2

Example request for records

You can refer to this example to help you write to your employer requesting a copy of your records. If you need more information visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

Freshfruit Cafe

10 Plantation Drive

Plantation Point VIC 9112

1 October 2015

Dear Ms Smith

I am a former employee of Freshfruit Cafe. I worked as a chef at your Plantation Point location between March 2015 and September 2015. I would like to check my employment entitlements.

To do this, I need information from my employment records. Can you please provide me with the following records for the period 1 March 2015 to 30 September 2015:

- the businesses legal name and ABN
- my start date
- my termination date and the reason for my termination
- my job description and classification under the award
- my employment status (full-time, part-time or casual)
- records of the hours I worked (including date/day of the week, start and finish times and breaks)
- pay slips or other records of my pay (including loadings, penalty rates, overtime, and other amounts)
- any deductions from my pay
- my leave records showing leave accrued and taken (both paid and unpaid).

Please note that I am allowed to obtain copies of these records under the Fair Work Regulations 2009.

Please provide these records to me by 22 October 2015. They can be sent by post to my address above, or by email at jill.jackson@homeemail.com.au.

Please contact me on 0444 123 456 if you would like to discuss this request.

Yours sincerely

Jill Jackson

Find out more
www.fairwork.gov.au
Fair Work Infoline – 13 13 94



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