

Information Sheet

Record Keeping Obligations for National System Employers

November 2021

The *Fair Work Act (Cth) 2009* (FW Act) requires employers to keep specific employee records.

Many awards and agreements also require employers to keep records, such as time and wages records.

Awards and agreements should be consulted in conjunction with the information provided below.

Employers are required by law to keep employment records for a minimum of seven years.

Employees employed by National System employers

The *Fair Work Regulations 2009* (the Regulations) requires national system employers to maintain extensive records in relation to:

- basic employment details;
- pay records;
- hours worked;
- leave entitlements;
- superannuation contributions;
- individual flexibility arrangement records;
- guarantee of annual earnings;
- termination of employment; and
- transfer of business.

The Regulations specify the required content of employee records and stipulate that they must contain the following details:

- the employer's name;
- the employee's name;
- whether the employee's employment is full time or part time;
- whether the employee's employment is permanent, temporary, casual;

- the date on which the employee's employment began; and
- the employer's Australian Business Number (ABN)

Presentation of records and pay slips

It is the responsibility of the employer to ensure all records are in a legible form, in the English language and readily accessible to an inspector.

A payslip must include all the information as prescribed by the Regulations. Employers can provide pay slips to employees in electronic form or in hard copy. The FW Act requires employers to provide employees with pay slips within one working day of paying employees for the work performed. Further record keeping requirements may be specified in modern awards or enterprise agreements.

CCIWA Publication

Our National System HR Starter Kit contains a **recording keeping and payslip checklist**.

This kit is a great for businesses setting up or updating their HR systems. It covers recruitment through to end of employment and everything in between.

Contact us on (08) 9365 7660 or at advice@cciwa.com for more information.

Presumption where records not provided

Section 557C of the FW Act, introduced in 2017, imposes a reverse onus of proof on employers where they have not made and/or kept relevant employment records. The new provisions provide that, where an employer has not made or kept employment records and/or made these available for inspection, they hold the burden of disproving employee underpayment claims.

What information should be included on a pay slip?

- the employer's name;
- the employer's ABN;
- the employee's name;
- the date of payment;
- the dates of the pay period;
- the gross and net payments;
- any deductions to the gross payments; and
- superannuation contributions;

A record of all hours worked must be kept for casual and irregular part time employees who have a guaranteed basic rate of pay.

Where an employee is entitled to be paid an incentive-based payment, a bonus, a loading, a penalty rate or another monetary allowance, the record must contain details of the payment.

Casual loading for casual employees

Casual loading should be clearly separated and identifiable on pay slips and in the employment contract.

In relation to hours worked, employers are required to keep the following records:

- If an employee works overtime hours and a penalty rate or loading is applicable, the records to be kept are:
 - the number of overtime hours worked by the employee during the day; or
 - when the employee started and ceased working overtime hours.
- If the employer and the employee agree in writing to average the employees' hours of work, it must be in accordance with the FW Act and any applicable modern award or enterprise agreement. The employer must also keep a copy of that agreement.

In relation to leave, the employer must keep records that specify:

- any leave taken

- the balance of the employee's entitlement to leave

If any cashing out arrangements are made in accordance with the industrial instrument, between the employer and the employee, the employer must keep a copy of the written agreement and a record of the amount cashed out.

In relation to Long Service Leave, the employer must keep records that specify:

- The employee's name, and if the employee is under 21 years of age, the employee's date of birth;
- The date the employee commenced employment with the employer
- The gross and net amounts paid to the employees including any deductions and the reason for those deductions
- All paid and unpaid leave taken by the employee;
- Details of any agreement between the employee and employer to contract out of Long Service Leave made under section 5 of the Long Service Leave Act 1958; and
- Each record must be retained during the employment of the employee and for not less than 7 years thereafter.

Who can access employment records?

An employee or a former employee can request to view their own time and wages records. The employer must make the records available for inspection and make copies on request. A Fair Work Inspector appointed under the FW Act can also request in writing to inspect or take copies of employment records.

What happens in cases of transfer of business?

There are specific record keeping obligations for both the old and the new employer in situations of transfer of business.

Should your organisation experience a transfer of business we recommend you contact our Employee Relations Advice Centre on 08 9365 7660 for further assistance.

What happens if an employer contravenes the record keeping, and pay slip requirements?

Fair Work Inspectors from the Fair Work Ombudsman can issue an employer with an infringement notice if they fail to meet the requirements under the FW Act. The maximum fines payable for an infringement notice are:

- \$13,320 for an individual contravention; and
- \$66,600 for a body corporate contravention.

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