



Wage theft - what can I do?

My wages haven't been paid.

If your employer hasn't paid you the wages (or other entitlements like superannuation) you're entitled to receive, there are several things you can do to recover them.

You should speak with your employer first about what you are owed to see if you can resolve the matter. Some underpayments of wages occur through genuine error or oversight, and your employer may be able to quickly fix the issue and pay you what you are owed.

If you have already tried raising the issue with your employer, you can seek assistance from your trade union or make a complaint to the Fair Work Ombudsman (FWO) for wages and other entitlements or the Australian Taxation Office (ATO) for superannuation. If the matter is not resolved through informal measures or after making a complaint to the FWO or ATO, you can seek legal advice about taking wage recovery action against your employer in court.

Trade unions

Trade unions provide support and advice to employees to help them better understand their rights and obligations in the workplace. Your trade union can provide advice about your entitlements and may be able to help you recover your wages. Visit australianunions.org.au or call Australian Unions on **1300 486 466** to find out which trade union covers the work you do. The FWO can also provide guidance on the relevant trade union to contact for your industry.

Fair Work Ombudsman

The FWO can advise the minimum hourly rates you should be paid and provide guidance about how to raise the matter with your employer. They may explore mediation between you and your employer to resolve your claim or in the most serious cases take your employer to court to recover wages. You can contact them on **13 13 94**, or at fairwork.gov.au.

Australian Taxation Office

If you are trying to recover unpaid superannuation, you should contact the ATO. The ATO can tell you what your contributions should be, investigate whether your employer has been making the required superannuation contribution and work with your employer (or take them to court) to recover your unpaid superannuation. You can contact the ATO on **13 10 20** or visit ato.gov.au

Other organisations

For international students, your educational institution may be able to assist you. If you are a school student, talk to your school guidance counsellor or chaplain. Workers can seek advice or assistance from other organisations including:

- Office of Industrial Relations - for long service leave, and other advice for Queensland state and local government employees - oir.qld.gov.au or call **07 3406 9999**
- Basic Rights Queensland - brq.org.au
- Young Workers' Hub - ywhub.org.au
- JobWatch - jobwatch.org.au
- Legal Aid Queensland - legalaid.qld.gov.au
- Community Legal Centres Queensland - communitylegalqld.org.au

How do I claim my wages in court?

You can pursue the recovery of wages owing to you through the Magistrates or Industrial Magistrates Courts. The wage recovery process provides quick and low-cost resolution of your wage claim. Information on commencing a wage recovery claim can be found at oir.qld.gov.au.

Before a wage recovery claim reaches the court, you will have an opportunity to engage in a conciliation process where the parties are assisted by an experienced industrial commissioner. Conciliation is an informal (not in a court) process intended to help the parties reach agreement or reduce matters in dispute to achieve a timely, cost-effective, proportionate and agreed resolution where possible.

Where a claim is not settled at conciliation, it will be scheduled for hearing by the court and decided on the *balance of probabilities* (compared to criminal prosecutions that must be proven beyond reasonable doubt). If your claim is for \$20,000 or less (a small claim) the court proceedings will be conducted in an informal manner without regard to legal forms and technicalities. For a small claim, representation is by 'leave (permission) of the court' or conciliator. You may wish to seek advice before you lodge a claim. Some organisations you can contact are listed on this fact sheet.

If after pursuing these options you believe the employer has intentionally stolen the wages, you can make a complaint to the police for investigation. It is important to note that the police do not pursue and recover unpaid wages. The police will consider the information you provide in your complaint when deciding to investigate whether a crime of wage theft has been committed and initiate a prosecution. Criminal investigations and prosecutions are complex and often take significant time to resolve.

Is wage theft a crime?

Under Queensland law, your employer may have committed the crime of 'stealing' if they have not paid you wages or other entitlements intentionally. Your employer will not have stolen your wages if they had an honest belief that they had paid you the correct entitlement or if the underpayment was an unintentional mistake or delay.

Example 1: "I haven't been paid my wages. I asked my employer, and they said that there has been a problem with the payroll system. They apologised and said that it should come through in a few days". In this case, the employer did not mean to keep the pay for their own use – they just didn't make the payment on time. This would not be a crime.

Example 2: "I was paid a flat rate of \$10 per hour for all my work. My co-workers get paid the correct award rates including penalty rates. I have asked my employer about this and they said not to complain about it". In this case, the employer appears to be aware of the correct rate of pay but is deliberately and knowingly underpaying at least one of their workers. This may be a crime.

You can contact the Queensland Police Service on **131 444**.

For more information on wage theft visit oir.qld.gov.au.