

Complaints about wages

An employer's guide



This booklet outlines the process this department undertakes when it receives complaints about underpayment of wages and entitlements.



Department of Consumer
and Employment Protection
Government of Western Australia
Labour Relations Division

Disclaimer

At the time of print, all contents of this booklet were accurate. However, legislative change may impact on employment arrangements in the workplace. Telephone the Department of Consumer and Employment Protection's Wageline call centre on 1300 655 266 for up-to-date information.

This publication is available on request in other formats to assist people with special needs.

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Introduction

Employers have a legal obligation to pay employees their lawful wages and entitlements. This booklet is to help employers understand those obligations and the process the Department of Consumer and Employment Protection undertakes when it receives complaints from employees.

Under Western Australian law, employers are required to pay employees their correct employment entitlements, including rates of pay, leave and allowances. Failure to do so could result in lengthy and costly proceedings in the Industrial Magistrate's Court.

When employee complaints are received, the department's first response is to try to assist the parties in resolving their differences through dialogue and mutual agreement. If this fails, the department may then undertake formal investigations as to the validity of claims and, if required, seek intervention of the courts in enforcing outcomes of its enquires.

Step one

Formal enquiries

Formal complaints about non-payment of lawful wages and entitlements can be made by existing or former employees. This is done using a special Formal Enquiry form, which is obtained from and lodged with the Department of Consumer and Employment Protection.

However, before accepting formal enquiries, the department strongly encourages employees to try resolving claims through direct discussion with employers. Where discussions fail, employees are then encouraged to present complaints to employers in writing. If the problems still have not been resolved, employees may then lodge Formal Enquiry forms.

The forms require employees to provide specific information, such as:

- dates of starting and finishing employment (if they are no longer employed);
- job title and duties they are required to perform;

- total number of hours worked each day and week;
- weekly rate of pay; and
- any other remuneration received.

Employees are also required to outline the basis of their claims (eg. non-payment of overtime or underpayment of wages). Where possible, supporting documentation such as time and wages records, group certificates, pay slips, employment declaration forms and copies of any relevant correspondence with employers should also be provided.

Step two

Resolution period

Upon receipt of a Formal Enquiry, the Department of Consumer and Employment Protection writes to the relevant employer, explaining that a complaint has been lodged and outlining the nature of the claim. After delivery of this letter, the employer and employee are given up to 21 days to resolve the matters at issue.

The department's pre-complaint officers are available to help employers should they require further information or assistance during this resolution period.

If aggrieved employees are still working with their employers, at no point during the resolution period should they be intimidated, threatened or dismissed. That would be against the law and would not be viewed favourably if the matters were to eventually go to court.

Where agreement is reached within 21 days, the department does not proceed with a formal investigation. However, where agreement is not reached, an investigation would commence.

Step three

Investigating formal enquiries

Formal enquiries are investigated by Department of Consumer and Employment Protection industrial inspectors, impartial officers employed to ensure proper observance of industrial laws. They do not represent or act on behalf of either employers or employees.

Inspectors examine the evidence to determine whether or not employees' claims can be substantiated, including time and wages records. When inspectors request access to these records, employers must comply. Failure to comply attracts a penalty of up to \$5000. If time and wages records have not been kept, the inspectors will examine any other relevant evidence. Employers should note that non-maintenance of time and wages records can also result in prosecution.

As part of their investigations, inspectors may need to interview employers and any other relevant witnesses, and may also visit employers' premises. It is important that inspectors are provided as much cooperation and information as possible to facilitate speedy and accurate assessment of claims.

Step four

Investigation outcomes

When investigations are completed, employers are contacted by industrial inspectors, to advise whether or not valid claims exist. Where valid claims are not found, the department takes no further action.

Where valid claims are found to exist, employers are advised in writing of the amount owing and when payments to claimants are required (normally within 14 days).

Step five

Payment of amounts owed

The Department of Consumer and Employment Protection prefers that employers pay any entitlements directly to employees, either by electronic transfer, cheque or money order. Failure to make payments can result in prosecutions.

Step six

Enforcement of payments

If entitlements are owed to employees but employers refuse to pay, the department may initiate prosecutions in the Industrial Magistrate's Court. The Industrial Magistrate has the power to order payments. Non-complying employers may also be fined up to \$2,000 for each breach of the law.

Further information

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8.30-5.00pm weekdays, except Wednesdays 9.00am-5.00pm

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