

PROFESSIONAL SERVICES

Are your payslips and employee records in order?



The new laws will double the maximum penalties for record-keeping and payslip breaches, to \$12,600 per contravention for individuals and \$63,000 for companies.

WHEN MODERN Award rates increased in July, most private practice employers would have reviewed how much they were paying their staff, checked the new rates and provided increases if required. But when was the last time you checked that your employee records and payslips were in order and complied with the specific requirements in the Fair Work Act?

On the 15 September 2017, the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 came into effect. New measures under the Act will double the maximum penalties for employers who don't comply with employee payslip and record keeping obligations (increasing penalties to \$12,600 for an individual and \$63,000 for a company). In addition, penalties of 10 times those amounts will be introduced for "serious contraventions" of the National Employment Standards (eg, deliberate underpayments and breaches).

Why payslips & records matter

The highly publicised 7-Eleven underpayment scandal and a number of other major investigations by the Fair Work Ombudsman (FWO) have brought closer scrutiny to payslips and record keeping and led to a bi-partisan push to protect vulnerable workers. While the focus is on franchise employees, the new laws apply to any private sector employer and recognise that it is difficult for FWO to prosecute underpayments if the records kept by employers can't be used to assess the size of the underpayment. As a practical step, FWO has also launched a new "record my hours" app, allowing employees to record their own hours of work and, if necessary, challenge their employer's records.

Apart from penalties, for private practice employers, there are other financial risks of not keeping proper

employee records. For example, the Modern Awards applying to nurses and practice support staff require written records to be kept about whether employees are full-time, part-time or casual, and if they're part-time, a new written agreement needs to be made each time their regular pattern of work changes. Without this, in addition to penalties, the risk is that additional hours will attract overtime rates for additional or non-standard hours (even if they're paid "above Award" rates). This is something many private practices haven't factored into their staffing budget.

Payslips and records are also often the first thing an aggrieved employee asks for when a relationship sours. If you're trying to performance manage an employee, or they leave your business on bad terms, the last thing you want is for them to request a copy of their pay records and discover you have made errors. Failing to keep good records is like giving an employee a "free kick", can lead to FWO getting involved, and will often blur and complicate other performance issues/grievances significantly.

Practical compliance tips

So what can you do to help ensure compliance and manage the risk? Here are our top tips:

Audit your payslips.

Do you issue them within one working day of every payment? And do they contain all the information required by the Fair Work Regulations? Common mistakes include using an employer name/ABN that doesn't match the employee's contract, or failing to itemise hourly rates and other payment items correctly. If you're not sure, ask your bookkeeper/practice manager for a written assurance they have sought advice and ensured compliance. Or ask AMA (NSW) to check the documents for you.

Check your last seven years of records and be diligent about filing and backups.

Employers need to keep employee records for seven years – could you find (and decipher) yours quickly and easily if the FWO came knocking? We often find employers have difficulty even finding the original copy of an employee's contract, let alone copies of letters, emails or other records showing hours worked, agreement to vary hours, leave requests, etc. If you don't already have a central place to store all employee records (with a backup), you need one.

Don't rely on staff to record their own hours. If you employ casuals or irregular part-timers, you need to record the hours employees actually work. For all employees, you also

need to be able to identify precisely any hours that attract overtime or penalty rates. It's important you implement a system that requires employees to record their actual hours worked – and allows you to regularly monitor and approve them – so that you can maintain these records appropriately.

Want help?

FWO's website has some good information on payslip and record keeping information obligations, and you can find links to this through the employer quick links page on our AMA (NSW) website (<https://www.amansw.com.au/professional-services/employer-quick-links>). Alternatively, for further information, or assistance with your practice needs, lodge an enquiry with our professional services team by emailing professionalservices@amansw.com.au.

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