



# VICTORIA'S WAGE THEFT LAWS

EMPLOYEE INFORMATION



## Your pay and conditions

You are entitled to receive at least the minimum pay and conditions outlined in your contract or the relevant award, workplace agreement or legislation.

The minimum conditions and entitlements outlined in an award, legislation or a registered workplace agreement cannot be overridden by a contract or agreement with your employer that provides for less beneficial entitlements.

Information about pay rates and entitlements is available from the Fair Work Ombudsman – [fairwork.gov.au](http://fairwork.gov.au).

The Ombudsman may also be able to help you resolve workplace issues.

## What is wage theft?

Wage theft offences involve dishonest conduct by employers. Honest mistakes or actions taken with due care and diligence are not considered wage theft.

You may be a victim of wage theft if your employer has:

- deliberately and dishonestly underpaid you
- deliberately and dishonestly withheld wages superannuation or other employee entitlements
- falsified employee entitlement records to gain a financial advantage
- not kept employee entitlement records to gain a financial advantage.

## Reporting wage theft

At the Wage Inspectorate we investigate wage theft offences, including reports made by employees, and provide general information about wage theft laws.

We only investigate matters that occurred in Victoria or have a link to Victoria.

Report suspected wage theft at [wageinspectorate.vic.gov.au](http://wageinspectorate.vic.gov.au).

## Reclaiming money

An employer may choose to repay employee entitlements because of our investigation, however this is not guaranteed. The Wage Theft Act does not directly contemplate recovery of employee entitlements unless there is a finding of guilt or conviction following a prosecution for certain wage theft offences.

If recovering money owed to you is your main goal, there may be better and quicker options.

For help or advice about recovering money:

- contact the Fair Work Ombudsman – [fairwork.gov.au](http://fairwork.gov.au).
- contact your union if you're a member of one
- lodge a small claim in the Magistrates' Court or Federal Circuit Court, or take other legal action.

To recover unpaid superannuation, contact the Australian Taxation Office – [ato.gov.au](http://ato.gov.au). If you believe your employer has deliberately and dishonestly withheld your superannuation, you can make a wage theft report to us.

## Frequently asked questions

### I have been underpaid, what should I do?

If you have been underpaid, you could:

- Make a report to the Wage Inspectorate if you think your employer deliberately and dishonestly underpaid you or withheld wages or entitlements.
- Write or speak to your employer to see if they can resolve the issue. Many underpayments are the result of an error or oversight.
- Contact your union if you're a member of one. It may be able to help you recover what you're owed and advise you about options for further action.
- Request help from the Fair Work Ombudsman, which may be able to help you resolve your workplace issue.

- Lodge a small claim in the Magistrates' Court or Circuit Court, or take other civil court action.
- Seek legal advice.

### **What are employee entitlements?**

Employee entitlements are an amount payable to an employee, or any other benefit payable or attributable to an employee, including:

- wages or salary
- allowances and gratuities
- annual leave
- long service leave
- meal breaks
- superannuation.

### **What if I agreed to receive less pay and entitlements?**

Employers must provide their employees with at least the minimum pay and entitlements outlined in the relevant award, workplace agreement, contract or legislation.

The minimum conditions and entitlements outlined by an award, legislation or registered workplace agreement cannot be overridden by a contract or agreement that gives less beneficial entitlements.

### **What happens when I report suspected wage theft to the Wage Inspectorate?**

We review and assess each report. We may then:

- investigate further and, where appropriate, take action against your employer
- provide information on recovering any money you're owed
- refer you to another organisation that can assist, such as the Fair Work Ombudsman or the Australian Taxation Office
- take no further action if we're unable to help you. In this situation, we will explain why.

We aim to respond to reports within 21 days.

### **What information and documents do I need to give the Wage Inspectorate?**

The offences under Victoria's wage theft laws are criminal offences that must be proved to a standard of 'beyond reasonable doubt'.

The information and documents you provide help us determine whether we can investigate your matter, so provide as much as you can:

- employment contract
- pay slips
- PAYG payment summaries
- bank statements
- time sheets or records of hours worked
- correspondence with your employer or other agencies (such as emails, letters or text messages).

You may be asked to provide a witness statement and, if a matter proceeds to court, you may have to give evidence.

### **What if I don't have documents to support my report?**

Most of the information we collect and review is contained in written documents or records, such as contracts, pay slips or timesheets.

Under certain circumstances, we may use our powers under the Wage Theft Act 2020 to collect this information.

Employers are legally required to keep employee pay and entitlement records. It is an offence to avoid keeping these records to gain a financial advantage.

### **What if the wage theft occurred before the new laws came into effect on 1 July 2021?**

We can only investigate alleged wage theft offences for conduct that occur on or after 1 July 2021. However, entitlements accrued before 1 July 2021 may be captured if the employer dishonestly withhold those entitlements from 1 July 2021.