



# VICTORIA'S WAGE THEFT LAWS

EMPLOYER INFORMATION



## What is wage theft?

In Victoria, from 1 July 2021, it becomes a crime to:

- deliberately and dishonestly underpay workers
- deliberately and dishonestly withhold wages or other employee entitlements
- falsify employee entitlement records to gain a financial advantage
- avoid keeping employee entitlement records to gain a financial advantage.

These crimes are punishable by a fine of around \$200,000 or up to 10 years' jail for individuals and a fine of almost \$1 million for companies.

Victoria's wage theft laws target employers who deliberately and dishonestly withhold wages and other worker entitlements.

Honest mistakes made by employers who exercise due diligence in paying wages and entitlements are not considered wage theft.

## Wage Inspectorate Victoria

Wage Inspectorate Victoria is an independent body that promotes and enforces Victoria's:

- wage theft laws
- child employment laws
- long service leave entitlements
- owner driver, forestry contractor, hirer and freight broker obligations.

At the Wage Inspectorate our role under Victoria's wage theft laws is to:

- inform, educate and assist businesses and workers about their rights and obligations
- investigate wage theft and prosecute offenders
- respond to reports and tip-offs about wage theft.

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

## Independent investigations

We conduct independent, impartial and transparent investigations to determine whether we believe wage theft offences have been committed. Our inspectors will:

- clearly explain the allegation made against a business
- provide a business with an opportunity to respond to a matter being investigated
- ask questions about the matter
- ask for documents or other relevant information.

We will let businesses know the outcome of an investigation, if appropriate.

## Strong powers

Our inspectors have strong powers that they can use to investigate potential wage theft offences, including the power to:

- enter premises
- obtain information and documents
- seize evidence
- require a person to give evidence or answer questions under oath or affirmation
- apply for and execute search warrants.

Many of these powers are coercive, meaning that you must cooperate with requests made, unless you have a reasonable excuse for not doing so. An inspector will give you information about your rights and obligations if they exercise these powers.

## Proportionate responses

If we believe a wage theft offence has been committed, we may:

- issue a formal written warning
- accept an enforceable undertaking
- bring criminal proceedings
- refer indictable matters to the Office of Public Prosecutions for advice and criminal prosecution.

## Frequently asked questions

### What should I do if I've underpaid my employees?

If you have underpaid an employee, you should fix this as soon as possible. The Fair Work Ombudsman has a step-by-step guide to fixing an underpayment.

### What if my employees 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 with the employee that gives less beneficial entitlements.

### Who can be charged under Victoria's wage theft laws?

The offences apply to employers and to 'officers' of that employer.

Which roles are considered 'officers' depends on the entity type of the employer, but it generally applies to positions such as directors, office holders partners and people who may make substantial business decisions on behalf of the employer.

The Wage Theft Act 2020 specifies who is considered an 'officer' of an employer.

Who is an 'officer' of a body corporate employer mirrors section 9 of the Corporations Act 2001.

### What can I expect if I am being investigated for alleged wage theft?

We will conduct an independent, impartial and transparent investigation to determine whether we believe a wage theft offence has been committed. An inspector will:

- clearly explain the allegation made against you or your business
- ask questions about the matter

- ask for documents or other relevant information
- give you the opportunity to explain any actions you or your business have taken in relation to the matter being investigated.

### What outcome may be expected following an investigation?

We review all information to determine whether there is enough evidence for a court to be satisfied, beyond reasonable doubt, that a wage theft offence has been committed:

#### No offences found

If our investigation does not identify any wage theft offences, we will take no further action. This could occur when:

- the quality of evidence is poor or insufficient to prove an alleged offence beyond reasonable doubt
- no evidence is available
- the employer is found to be complying with the law.

#### Offences found

If our investigation finds one or more offences have occurred, we may:

- issue a formal written warning for minor breaches
- accept a written undertaking from the person to take certain actions or refrain from taking certain actions.
- bring criminal proceedings
- refer indictable matters to the Office of Public Prosecutions for criminal prosecution.

### Are the wage theft laws retrospective?

We can only investigate alleged wage theft offences that occurred on or after 1 July 2021. However, entitlements accrued before 1 July 2021 will be captured if the employer's conduct to dishonestly withhold those entitlements occurs after 1 July 2021.