



March 2010.

## Employer Obligations in Relation to Employee Records and Pay Slips

Employers who engage employees under relevant Commonwealth workplace laws are required to:

- Make and keep accurate and complete records for all of their employees (eg. time worked and wages paid).
- Issue pay slips to each employee.

These record-keeping and pay slip obligations are designed to ensure that employees receive their correct wages and entitlements.

### What are the record-keeping obligations?

Employee records must:

- Be in a form that is readily accessible to a Fair Work Inspector.
- Be in a legible form and in English (preferably in plain, simple English).
- Be kept for seven years.
- Not be altered unless for the purposes of correcting an error.
- Not be false or misleading to the employer's knowledge.

Employee records are private and confidential. Generally, no one can access them other than the employee, their employer, and relevant payroll staff. Employers must make copies of an employee's records available at the request of an employee or former employee.

However, Fair Work Inspectors and organisation officials (such as a trade union) may access employee records (including personal information) to determine if there has been a contravention of relevant Commonwealth workplace laws.

Please contact NECA's Employee Relations Department for further information on the powers of Fair Work Inspectors entering premises and requiring the production of records or documents or the rights of organisation officials relating to entering premises and requiring the production of records or documents.

### What information must be made and kept in employee records?

A range of information must be made and kept for each employee as prescribed by the *Fair Work Act 2009* and *Fair Work Regulations 2009*.

#### General records

General employment records must include all of the following:

- The employer's name.
- The employer's Australian Business Number (ABN) (if any).
- The employee's name.
- The employee's commencement date.
- The basis of the employee's employment (full or part-time and permanent, temporary or casual).

### **Pay records**

Records of pay must include all of the following:

- The rate of pay paid to the employee.
- The gross and net amounts paid and any deductions from the gross amount.
- The details of any incentive-based payment, bonus, loading, penalty rate, or other monetary allowance or separately identifiable entitlement paid.

### **Hours of work records**

Records relating to hours worked by employees are to include the following:

- In the case of a casual or irregular part-time employee who is guaranteed a pay rate set by reference to time worked, a record of the hours worked by that employee.
- For any other type of employee, the record must specify the number of overtime hours worked each day, or when the employee started and finished working overtime hours (but only if a penalty rate or loading must be paid for overtime hours actually worked).
- A copy of the written agreement if the employer and employee have agreed to an averaging of the employee's work hours.

### **Leave records**

If an employee is entitled to leave, the record must include both:

- Leave taken, if any.
- The balance of the employee's entitlement to that leave from time to time.

Under the National Employment Standards and the Electrical, Electronic and Communications Contracting Industry Award 2010, employees **are not** able to cash out annual leave and/or personal/carer's leave, therefore you must have a registered agreement with this provision.

If an employer and employee have agreed to cash out an accrued amount of leave in accordance with their registered agreement, the employer must keep both:

- A copy of the agreement to cash out the amount of leave.
- A record of the rate of payment for the amount of leave cashed out and when the payment was made.

### **Superannuation contributions records**

If the employer is required to make superannuation contributions for the benefit of the employee, the record must include all of the following:

- The amount of the contributions made.
- The dates on which each contribution was made.
- The period over which the contributions were made.
- The name of any fund to which a contribution was made.
- The basis on which the employer became liable to make the contribution, including a record of any election made by the employee (including the date) to have their superannuation contributions paid into a particular fund.

**Note:** Employers who contribute a defined benefit interest in a defined benefit fund do not have to fulfil the reporting requirements relating to superannuation contributions.

### **Individual flexibility arrangement records**

If an employer and employee agree in writing to an individual flexibility arrangement in relation to a modern award or enterprise agreement, a record must include both:

- A copy of the agreement.
- A copy of any notice or agreement terminating the flexibility arrangement.

### **Guarantee of annual earnings records**

If an employer gives a guarantee of annual earnings under the *Fair Work Act 2009*, the employer must make and keep a record of:

- The guarantee.
- The date of any revocation of the guarantee (where applicable).

### **Termination records**

Where the employment has been terminated, the records must include both:

- Whether the employment was terminated by consent, by notice, summarily, or in some other manner (specifying that manner).
- The name of the person who terminated the employment.

### **Transfer of Business records**

Where there has been a transfer of business under the *Fair Work Act 2009*, at the time of transfer, the old employer is required to transfer to the new employer each employee record concerning a transferring employee.

If the transferring employee becomes an employee of the new employer after the transfer, the new employer must ask the old employer to provide them with the employee's records. The old employer must give the records to the new employer.

### **What are the pay slip obligations?**

Pay slips must be issued to each employee:

- Within one working day of pay day, even if an employee is on leave.
- In electronic form or hard copy.

It is best practice for pay slips to be written in plain and simple English.

### **What information must be included on the pay slip?**

Pay slips must contain details of the payments, deductions and superannuation contributions for each pay period. The following information must be included on all pay slips issued to each employee as prescribed by the *Fair Work Act 2009* and the *Fair Work Regulations 2009*.

A pay slip must include all of the following:

- The employer's name
- The employer's ABN (if any)
- The employee's name
- The date of payment
- The pay period (beginning and end dates – eg. 24/2/10 to 30/2/10)
- The gross and net amount of payment
- Any loadings, monetary allowances, bonuses, incentive-based payments, penalty rates, or other separately identifiable entitlement paid.

Additionally, where relevant, a pay slip must include any of the following:

- If the employee is paid an hourly pay rate, the ordinary hourly pay rate and the number of hours worked at that rate and the amount of payment made at that rate.
- If the employee is paid an annual rate of pay (salary), the rate as at the last day in the pay period.
- Any deductions made, including the name, or the name and number, of the fund or the account of each deduction.
- If the employer is required to make superannuation contributions for the benefit of the employee:
  - ◆ the amount of each contribution the employer made or is liable to make during the pay period
  - ◆ the name, or name and number, of any superannuation fund into which the contributions were made or will be made.

## What deductions may be made from an employee's pay?

Under the *Fair Work Act 2009*, an employer is allowed to make a deduction from an employee's pay if one of the following applies:

- The employee has authorised the deduction in writing (which must specify the amount) and the deduction is principally for the employee's benefit.
- The deduction is authorised by the employee in accordance with an enterprise agreement and other industrial instruments (eg. an award or agreement made under the former *Workplace Relations Act 1996*).
- The deduction is authorised by or under a modern award or order of Fair Work Australia.
- The deduction is authorised by or under a law or an order of a court.

Deductions that are commonly authorised include income tax deductions, superannuation, health insurance contributions and trade union dues.

A term in an enterprise agreement, modern award, industrial instrument, or contract of employment that allows for deductions has no effect if:

- The deduction is directly or indirectly for the benefit of the employer and is unreasonable.
- The employee is under the age of 18 and the employee's parent or guardian has not authorised the deduction in writing.

The *Fair Work Regulations 2009* provides that certain deductions are to be treated as reasonable. These include, for example, the recovery of costs incurred through private use by the employee of a credit card, mobile phone, or petrol for a vehicle that have been provided by the employer.

## Best practice guidelines for issuing electronic pay slips

Electronic pay slips must be provided to an employee (unless issued a hard copy) and include the same information as hard copy pay slips.

Employers should:

- Give electronic pay slips to each worker, such as via email or into an electronic personal account (employers should not simply store them on a database).
- Issue electronic pay slips in an easily printable format.

By way of best practice, employers should:

- Issue electronic pay slips to employees securely and confidentially.
- Ensure that employees can access and print their electronic pay slips in private (eg. it would be inappropriate to issue an electronic pay slip to an employee who doesn't have access to a computer terminal to privately read and print their pay slip).

## Contravention of record-keeping and pay slip obligations

Fair Work Inspectors may issue an employer with an infringement notice for failing to meet their record-keeping and pay slip obligations under the *Fair Work Act 2009*.

An infringement notice is similar to an on-the-spot fine and is an alternative to taking matters to court. An infringement notice can be issued within 12 months after the day on which contravention(s) is alleged to have occurred. Generally, an employer has 28 days to pay the penalty in the infringement notice.

The maximum fines payable from an infringement notice are:

- \$330 per contravention - for an individual
- \$1,650 per contravention - for a body corporate

If an employer's failure to meet their obligations is serious, wilful or repetitive, Fair Work Inspectors may recommend the matter be taken to court.

## Record-keeping and pay slip templates for employers

Contact NECA's Employee Relations Department if you require templates.