

# Best Practice in NSW Employment Records

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NSW Industrial Relations



# Best Practice in NSW

## Employment Records - Content

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- Form & Content
- Inspection and Copying
- Transfer of Business
- Accuracy and Definition
- Payslips & Deductions
- Method and Frequency of Payment
- Case studies
- Best Practice Tips
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# Best Practice in NSW

## Employment Records

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Fair Work Act 2009 provides detailed legislation relating to workplace law under the National Industrial Relations System

### **Minimum requirements relating to;**

- Paid employment including employer obligations relating to modern awards and the National Employment Standards
- **Record keeping requirements**
- Leave entitlements

NOTE: The Long Service Leave Act 1955 (NSW) section 8 refers to records to be kept by employers

- Every employer shall keep record in a form for a period of at least 6 years

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### Fair Work Act 2009

- **535: Employer obligations in relation to employee records**
  - An employer must make, and keep for 7 years, employee records of the kind prescribed by the regulations in relation to each of its employees

### The records must:

- If a form is prescribed by the regulations - be in that form; and
- Include any information prescribed by the regulations

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### Fair Work Act 2009

- **536: Employer obligations in relation to pay slips**
  - An employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work

### The pay slip must:

- If a form is prescribed by the regulations - be in that form; and
- Include any information prescribed by the regulations

# Fair Work Regulations 2009



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### Records – Form

#### Employers are required to make and keep records:

- In a form that is readily accessible to an Inspector
- In a legible form and in English (preferably in plain, simple English)
- Be kept for seven years and not be altered unless correcting an error
- Not be false or misleading
- Must be made available to current and former employees on request

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### Records – Content

A kind of employee record that an employer must make and keep is a record that specifies:

- the employer's name
- the employee's name
- whether the employee's employment is full-time or part-time
- whether the employee's employment is permanent, temporary or casual
- the date on which the employee's employment began
- on and after 1 January 2010 - the Australian Business Number (if any) of the employer

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### Records - Hours of Work

- Record of hours worked by employee (if casual or irregular part-time)
- Record of overtime hours worked or when employee started and finished overtime
- Any agreement to average hours

### Records - Pay

- The rate of pay paid to the employee
- The gross and net amounts 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

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### **Records - Leave**

- Leave taken and balance remaining
- Any agreement to cash out leave(see Modern Award)

### **Records - Termination**

- Was termination by consent, by notice, summarily or in some other manner
- The name of the person who acted to terminate the employment

### **Records - Superannuation**

- Superannuation contribution records:
- The amount of contributions made and the dates
- The period over which the contributions were made and the name of the fund

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### **Records- Inspection and Copying**

- An employer must make a copy of an employee record available for inspection and copying on request by the employee or former employee to whom the record relates
- The employer must make the copy available in a legible form to the employee or former employee for inspection and copying

### **The employer must:**

- Make the copy available at the premises within 3 business days after receiving the request; or
- Post a copy of the employee record to the employee or former employee within 14 days after receiving the request

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### Records- Transfer of Business

If a transfer of business occurs:

- The old employer must transfer to the new employer each employee record concerning a transferring employee that the old employer was required to keep
- The new employer must ask and the old employer must give the new employer the employee records concerning the transferring employee
- The new employer must keep the records, as if they had been made by the new employer at the time at which they were made by the old employer
- NOTE :This also applies to Long Service Leave *Act 1955*

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### Records - Accuracy

- An employer must ensure that a record that the employer is required to keep is not false or misleading to the employer's knowledge
- An employer must correct a record as soon as the employer becomes aware that it contains an error with a notation of the nature of the corrected error with the correction
- An employer must ensure that a record is not altered by another person
- A person must not make use of an entry in an employee record if the person does so knowing that the entry is false or misleading

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*Fair Work Act 2009* refers to *the Privacy Act 1988* which defines an employment record as follows:

**Personal information relating to the employment of the employee are health and personal information about all or any of the following:**

- engagement, training, disciplining or resignation
- performance or conduct, termination of the employment
- terms and conditions of employment
- personal and emergency contact details
- hours of employment, salary or wages
- membership of a professional or trade association or trade union membership
- recreation, long service, sick, personal, maternity, paternity or other leave
- taxation, banking or superannuation affairs

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### Pay Slips:

To be issued within one working day of pay day and is to include:

- Employer's name (legal entity) and employee's name
- ABN (if any)
- Date of payment
- Pay period (e.g. 22/3/18 to 28/3/18)
- Superannuation contributions – amount and fund
- Any deductions including name and/or number, fund or account
- Any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement
- If paid an hourly rate – the number of hours, hourly rate of pay and the amount at that rate
- If paid an annual rate – the rate to which the payment relates (the annual rate)
- Gross and net amount of pay

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### **Permitted Deductions:**

Deductions from an employee's wage must be reasonable, and authorised:

- In writing by the employee and principally for their benefit, or
- by an EA, MA, or FWC order, or
- Under a law or by a court order
- Any deductions to be shown on payslip

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### **Reasonable Deductions:**

A circumstance in which a deduction is reasonable:

The deduction is made in respect of the provision of goods or services;

- By an employer, or a party related to the employer and to an employee; and
- The goods or services are provided in the ordinary course of the business of the employer or related party and are provided to members of the general public on:
  - the same terms and conditions as those on which the goods or services were provided to the employee; or
  - on terms and conditions that are not more favourable to the members of the general public

Example:

- A deduction of health insurance fees made by an employer that is a health fund

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### Other Reasonable Deductions:

Another circumstance in which a deduction is reasonable is for the purpose of recovering costs directly incurred by the employer as a result of the voluntary private use of particular property of the employer by an employee

Examples of costs:

- The cost of items purchased on a corporate credit card for personal use by the employee
- The cost of personal calls on a company mobile phone
- The cost of petrol purchased for the private use of a company vehicle by the employee

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### Method and Frequency of payment of wages:

- An employer must pay an employee amounts payable to the employee in relation to the performance of work:
- In full (except reasonable deductions) and in money
- At least monthly (check award or agreement)
- Also the follow amounts if they become payable during a relevant period:
  - incentive-based payments and bonuses
  - loadings
  - monetary allowances
  - overtime or penalty rates
  - leave payments

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### Method and Frequency of payment of wages:

The methods are as follows:

- cash
- cheque, money order, postal order or similar order, payable to the employee
- the use of an electronic funds transfer system to credit an account held by the employee
- a method authorised under a modern award or an enterprise agreement
- If a modern award or an enterprise agreement specifies a particular method by which the money must be paid, then the employer must pay the money by that method

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### Example:

#### Clerks award

- Clause 23.2 Method and Frequency of payment;
- Wages must either be paid by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the employee
- Employees must be paid their wages weekly or fortnightly as determined by the employer or monthly if mutually agreed. Where payment is made monthly it must be on the basis of two weeks in advance and two weeks in arrears

# Fair Work Amendment Act 2017

## Protecting Vulnerable Workers

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INCREASED PENALTIES - Employers can be ordered to pay

- Increase penalties for breaches of record-keeping and pay slip obligations (up to \$12 600 per contravention for an individual and \$63 000 per contravention for companies)
- Increase penalties for 'serious contraventions' (up to \$126 000 per contravention for an individual and \$630 000 per contravention for companies)
- Introduce new penalties for giving false or misleading information, or hindering or obstructing investigations

# Fair Work Amendment Act 2017

## Protecting Vulnerable Workers

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- If an employee makes a claim in relation to a breach of the NES or a modern award or agreement and the employer did not;
  - keep the right records,
  - make those records available, or
  - give them a pay slip in the right form,
- Then the employer needs to prove that they did pay the employee correctly or gave them the right entitlements
- Employers who do not meet record-keeping or pay slip obligations and cannot give a reasonable excuse will need to disprove allegations in wage claims made in a court
  - This is referred to as a 'reverse onus of proof.'

# Case Study

## Employment Records

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- A service station owner and his company in inner-western Sydney, has been penalised \$16,038 and \$80,190 respectively after admitting falsifying records
- The owner and company provided a range of documents, including contracts of employment, time-and-wages records, pay slips and earnings summaries for six employees that FWO held were inconsistent with previous information provided.
- In Court the owner and company admitted that the reason for the inconsistency was that they had falsified documents and records, and unlawfully made use of the documents and records by providing them to the Fair Work Ombudsman.
- They also breached laws requiring employers to issue employees with accurate pay slips within one day of payday

# Case Study

## Employment Records

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- Currently facing the Federal Circuit Court is an owner of a number of Sushi outlets in the Newcastle area
- The owner was allegedly knowingly involved in providing Inspectors with false or misleading pay records for staff and was involved in the company's alleged failure to comply with laws relating to record-keeping and issuing pay slips.
- It is alleged that payment of a flat rate led to a significant underpayment of the minimum ordinary hourly rates, overtime rates and penalty rates, allowances, superannuation and annual leave entitlements were allegedly also underpaid and hundreds of dollars in unlawful deductions were allegedly made from two of the employees' wages

# Best Practice in NSW

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### Best Practice Tips:

- Keep good and accurate records which can be used as evidence in matters of dispute, documentation is very important
- Best practice suggests to keep accurate starting and ceasing times
- Some modern awards provide for a penalty if meal break interrupted or not taken within specified timeframe thus recommended to keep starting and finishing times of meal break of employees
- Ensure employees sign off on timesheets on a regular basis that entries are true and correct

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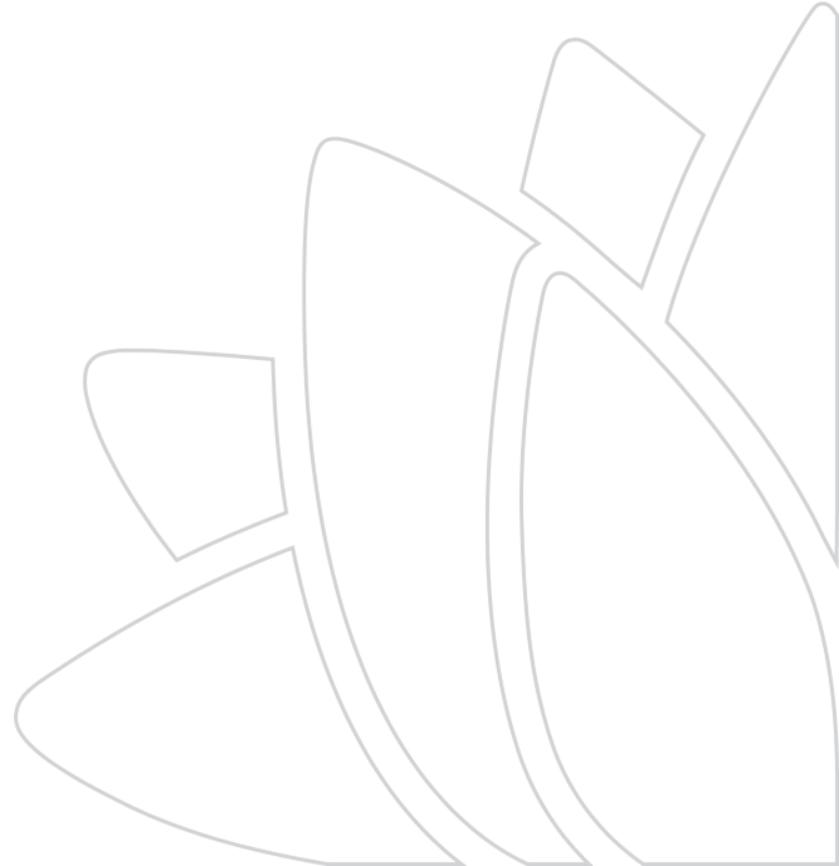
## Employment Records

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### Best Practice Tips:

- If showing leave accruals on payslips ensure amounts are correct
- Display classification, status and modern award coverage of employee although not legally required
- If issuing electronic payslips ensure;
  - the same info as a hard copy in an easily printable format
  - Send them via a personal email account securely and confidentially
  - Employees can access and print or read their payslip in private
- Employment records and payslip templates can be found by going to [fairwork.gov.au](http://fairwork.gov.au) website
- For more detailed information attend a Best Practice in NSW Paying Employees

# Where to go for Further Information



# Our Website

NSW Industrial Relations - 13 16 28



- Call us on 13 16 28
- Assistance with Long Service Leave enquiries
- Easy way to lodge a complaint by using our on-line application form
- Long Service Leave calculator for getting to the right summation

[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)



# Our Customer Service and Education

## Proactive Compliance Team

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- NSW IR Workshop Program FREE face to face sessions in Metro and Country locations including Best Practice in NSW;
  - Employer Responsibilities
  - Paying Employees
  - Long Service Leave



- Live and recorded webinars
  - Each month 3 sessions are provided at different times to suit
  - Recorded webinars are available for training and support
  - Many topics on-line now ready to assist

# Useful Contacts

## Details

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Fair Work Ombudsman - 13 13 94

- Fact Sheets, templates, pay tools and other resources for employers

[www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Commission

- Modern Awards, Fair Work Act 2009, Enterprise Agreements & Unfair Dismissals

[www.fwc.gov.au](http://www.fwc.gov.au)

Long Service Corporation - 131 441

- Portable Long Service Leave scheme for the Building and Construction industry and the Contract Cleaning Industry

SafeWork NSW - 131050

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

Anti Discrimination Board of NSW - (02) 9268 5544

[www.antidiscrimination.justice.nsw.gov.au](http://www.antidiscrimination.justice.nsw.gov.au)