

HOW TO CLAIM AN UNDERPAYMENT GUIDE ONLY (THIS IS NOT LEGAL ADVICE)

Step 1	Time Limit – are you within time to claim these entitlements.	6 years from the date when the employee should have been paid the entitlement and in the case of workplace discrimination, any issue that may have happened after 1 July 2009.
Step 2	Contact the Fair Work Ombudsman. Remember to write down the name of your Award so you can look it up and have a copy.	Call the Fair Work Ombudsman on 13 13 94 and confirm your award or enterprise agreement coverage. Remember to have a list of duties and qualifications you hold in case you are asked about them. Try to keep your requests simple and factual - the FWO cannot give you advice about your circumstances, only about your entitlements. A good example question to ask is: <ol style="list-style-type: none"> 1. What is my rate of pay? 2. Are there any dispute resolution clauses in my award? You may also need to know whether you were entitled to any of the following: <ul style="list-style-type: none"> ○ Loading ○ Overtime ○ Rate of pay ○ Meal allowances and other allowances ○ Notice periods ○ Redundancy
Step 3	Collect as much information you can to show your rate of pay.	<ul style="list-style-type: none"> • Payslips • Employment contract • Rosters, timesheets, leave requests and approvals • Payment summary and tax file number declaration • PLEASE SEE ATTACHED COURT LISTS AND SERVICES TO ASSIST YOU
Step 4	Work out what you were being paid and what you are owed.	PLEASE SEE ATTACHED AN EXAMPLE OF HOW TO WORK OUT YOUR CALCULATIONS – (taken from the Fair Work Ombudsman small claims guide).
Step 5	Dispute Resolution and/or step 5.	<ul style="list-style-type: none"> • Check in your Employment Contract, enterprise agreement or modern awards for dispute resolution clauses. • Follow those dispute resolution clauses.
Step 6	Pre-claim letter	<ul style="list-style-type: none"> • A formal letter to your employer (or former employer) requesting what payment you believe may be entitled to. • PLEASE SEE ATTACHED LETTER TEMPLATE (taken from the Fair Work Ombudsman small claims guide).
Step 7	If dispute resolution fails with your employer the next stage is Court.	<ul style="list-style-type: none"> • You may need to get legal advice about taking the matter to Court. • PLEASE SEE ATTACHED COURT INFORMATION and Queensland legal service information. (taken from the Fair Work Ombudsman small claims guide).
Step 8	If settlement is reached	PLEASE SEE ATTACHED TERMS OF SETTLEMENT AGREEMENT TEMPLATE (taken from the Fair Work Ombudsman small claims guide).

This link provides detailed information about the small claims process - <https://www.fairwork.gov.au/.../712/small-claims-guide.pdf.aspx>

WORK OUT YOUR CALCULATIONS

Employer: Tiny Traders Pty Ltd (ACN 000 000 000)

Applicant: Jane Smith

Employment Status: Full Time Shop Assistant

Modern Award: General Retail Industry Award (MA000004)

Classification: Retail Employee Level 1

Pre-Modern Award: Shop Employees (State) Award (QLD) (AN120499)

Classification: Group 1, Shop Assistant

Date of commencement: 12/07/2012

Date of termination: 22/4/2013

Ordinary rate of Pay: 1 July 2012 = \$17.53/hour

A) WAGES

Weekly pay period start date	Ordinary time entitlement	Amount paid	Amount owed
12/7/2012	\$666.14 (\$17.53 x 38 hours)	\$500	\$166.14
26/7/2012	\$666.14 (\$17.53 x 38 hours)	\$500	\$166.14
etc	etc	etc	etc
	Overtime rate (150% for 1 st 2 hours)	Amount paid	Amount owed
12/7/2012	\$52.59 (\$17.53 x 150% x 2 hours)	\$0	\$52.59
26/7/2012	\$52.59 (\$17.53 x 150% x 2 hours)	\$0	\$52.59
etc	etc	etc	etc
	Overtime rate (200% there after)	Amount paid	Amount owed
12/7/2012	\$70.12 (\$17.53 x 200% x 2 hours)	\$0	\$70.12
26/7/2012	\$70.12 (\$17.53 x 200% x 2 hours)	\$0	\$70.12
etc	etc	etc	etc

B) NOTICE

	2 weeks PILN	Amount paid	Amount owed
Payment in lieu of notice (PILN)	\$1,332.28 (\$666.14 x 2)	\$1,000	\$332.28

C) ANNUAL LEAVE

		Amount paid	Amount owed

Leave owed on termination	\$2,664.56 (\$666.14 x 2)	\$2,000	\$664.56
Annual Leave Loading	\$466.30 (17.5%)	\$0	\$466.30

TOTAL AMOUNT OUTSTANDING (577.70 + 664.56 + 466.30) = \$2,040.84

COURT INFORMATION

Court	Jurisdiction	Court Contact Details	Forms
Federal Circuit Court	<p>If the claim is for \$20,000 or less, and involves a breach of:</p> <ul style="list-style-type: none"> - One of the National Employment Standards - A term of a Modern Award - An enterprise agreement - A workplace determination - A safety net contractual entitlement - A national minimum wage order - An equal remuneration order - Or another Fair Work Commission order <p>You can elect to have the claim dealt with as a small claim in the Fair Work Division of the Federal Circuit Court.</p>	<p>The Federal Circuit Court has a Registry location in each State and Territory.</p> <p>Registry contact details can be accessed via the following link: http://www.federalcircuitcourt.gov.au/html/contacts.html</p> <p>Further information about the small claims process in the Federal Circuit Court can be accessed at: http://www.federalcircuitcourt.gov.au/services/html/workplace.html</p>	<p>Employee Forms</p> <p><i>Application – Fair Work Division</i></p> <p><i>Form 5 – Small Claim under the Fair Work Act 2009</i></p> <p>Employer Forms</p> <p><i>Response (General Federal Law)</i></p>
Magistrates Court of Queensland	<p>Court has jurisdiction under the <i>Fair Work Act 2009</i> to hear small claims up to \$20,000</p>	<p>Court website: http://www.courts.qld.gov.au/courts/magistrates-court</p>	<p>Employee Forms</p> <p><i>Form 2A – Employment Claim</i></p> <p>Employer Forms</p> <p><i>Form 6A – Notice of Intention to Defend an Employment Claim</i></p>

QUEENSLAND CONTACT INFORMATION

- Queensland Association of Independent Legal Services Inc – www.qails.org.au
- Queensland Law Society – www.qls.com.au/home
- Queensland Department of Justice Dispute Resolution Branch – www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/setting-disputes-out-of-court/dispute-resolution-in-the-workplace/
- Legal Aid - <http://www.legalaid.qld.gov.au/Home>
- Queensland Public Interest Clearing House - <http://www.qpilch.org.au/>
- CAXTON Legal Centre Inc. - <https://caxton.org.au/>



PRE-CLAIM LETTER

<your address>

<your phone number>

<Name of employer>

<Address of employer>

<Date>

Dear **<insert name of employer>**

I am writing about a concern I have in relation to certain employee entitlements that I do not believe I have received.

Choose the appropriate option below.

I was employed by you between **<starting date of employment>** and **<finishing date of employment>** on a **<insert employment state eg full-time, part-time or casual>** basis as a **<insert job title>**.

Or

I have been employed with you since **<starting date of employment>** and **<finishing date of employment>** on a **<insert employment state eg full-time, part-time or casual>** basis as a **<insert job title>**.

I understand that my employment **<is/was>** subject to **<insert name of relevant award or agreement, or the Fair Work Act 2009 if you are free>**. Under this **<award/agreement/Act>** I believe I am entitled to **<insert details of outstanding entitlement's, including the exact amount of money believe claimed>**.

I have included documents outlining my entitlements in support of my claim.

Delete the above sentence if not relevant. You can find documents about entitlements such as wages and leave at www.fairwork.gov.au

I would appreciate your consideration of this matter. If I do not hear from you within 7 days, I will consider lodging a small claims application with the **<insert name of relevant court>**. Information in relation to your obligations can be found at www.fairwork.gov.au. Alternatively you may wish to seek independent legal advice.

I look forward to an early resolution on this matter.

Yours sincerely,

<Insert name and signature>

TERMS OF SETTLEMENT AGREEMENT

<your address>

<your phone number>

<Name of employer>

<Address of employer>

Terms of Settlement Agreement

1. **<Insert respondent legal name>** trading as **<Insert Respondent trading name(if applicable)>** [the respondent] will pay **<insert Applicant name>** [the applicant] the sum of **<insert amount owed>** (less applicable tax).

2. The Respondent agrees that the above amount will be paid by Electronic Funds Transfer into the Applicants bank account in equal instalments of **<insert amount>**, to be paid weekly, with the first payment to be paid on **<insert date>**. The agreed payment schedule is set out in full below:

Payment Date	Payment Amount (Gross)
<insert date>	\$<insert amount>
<insert date>	\$<insert amount>
<insert date>	\$<insert amount>
<insert date>	\$<insert amount>

Total payment: \$ **<insert amount>**

3. The applicant agrees that the above payment, once made in full, constitutes full and final settlement of the following claims arising out of the employment of the Applicant by the Respondent under the terms and conditions of the **<insert industrial instrument>**, specifically:

- **<insert details of non-payment or underpayment i.e 'non payment of two weeks wages, non-payment of one week's pay in lieu of notice, underpayment of hourly rate'>**

<insert Applicant name>

<insert Applicant signature>

<insert date>

In the presence of **<insert witness name>** on **<insert date>**

<insert Respondent name>

<insert Respondent signature>

<insert date>

In the presence of **<insert witness name>** on **<insert date>**