

The Importance of Staff Records:

Poor record-keeping is a significant hazard for businesses in the current regulatory environment. It is important employers are aware of their obligations around making and maintaining lawful staff records as failure to do so can attract substantial fines for both the organisation and the individual.

What are my record keeping obligations as an employer?

The *Fair Work Act 2009* (Cth) and *Fair Work Regulations 2009* require a range of information to be **made and kept** by employers. The requirements set out in the Act and Regulations are **mandatory** and the FWO has the power to inspect records and issue infringement notices of up to \$2700 for a company and \$540 for an individual per contravention. However, more importantly because record keeping and payslip obligations are a civil remedy provision of the Act, failure to comply may also attract substantial civil penalties of up to \$54,000 for corporations and \$10,800 individuals, per breach.

Under the *Fair Work Act* sections 535 and 356 employers **must**:

- Make and keep employee records for **7 years** in relation to each employee.
- Give a payslip to each of its employees within one working day of paying the employee.

Pay slips and employee records must be in the form prescribed by the regulations and include information prescribed by the regulations.

What is the correct 'form' of employee records?

Employee records made and kept must be:

- legible;
- in English;
- readily accessible to a Fair Work Inspector; and
- made available to past and present employees upon request.

Further, employee records **must not** be:

- altered unless to correct an error; or
- false or misleading.

What must employee records include?

Records must specify all of the following:

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

Employers must create and keep **pay records** that specify all of the following:

- the rate of remuneration paid to the employee; and
- the gross and net amounts paid to the employee; and
- any deductions made from the gross amount paid to the employee; and
- the hours worked by the employee; and
- details of any bonus, loading, penalty rates, incentive based payments or other monetary allowances; and
- if the employee is paid at an annual rate of pay, the rate as at the latest date to which the payment relate; and
- superannuation contributions; and
- the Australian Business Number (if any) of the employer.

For employees who work overtime, if a penalty or loading is paid for overtime hours worked the employee record and payslip must specify the number of overtime hours worked by the employee during each day and when overtime commenced and finished.

For permanent staff who are entitled to leave the employer must make and keep records that set out:

- any leave the employee takes; and
- the balance of the employee's entitlement to the leave; and
- where there is an agreement to cash out annual leave the employer must also keep an employee record of the agreement, how much was paid, the amount of leave chased out and when payment was made.

Where an employee is terminated, an employer must make and keep a record that sets out:

- How employment was terminated, (i.e. by consent, notice or summarily); and
- The name of the person who acted to terminate the employment

Employers must also make and keep an employee record of superannuation contributions including the amount paid, pay period, dates paid, name of the superfund and the reason the employer paid into that fund (such as a record of the employers super fund choice and the date they made that choice).

If there is an individual flexibility agreement under an award or agreement employers must also keep a record that includes:

- a copy of the written agreement; and
- a copy of any notice or agreement to terminate the flexibility agreement

How long must I keep records for?

As mentioned above, employers are mandated to keep employee records for **7 years**.

False or misleading records:

An employer must ensure that records kept are not false or misleading. If you notice an error on a record this must be noted clearly and corrected as soon as you become aware. However, as will be discussed below, the penalties for false or misleading records are likely to increase with the new *Fair Work Amendment (Protecting Vulnerable Workers) Bill* where an employer makes or keeps an employee record that they *know* is false or misleading or gives a pay slip they *know* is false or misleading.

Fair Work Amendment (Protecting Vulnerable Workers) Bill

With the Fair Work Ombudsman cracking down on non-compliance and targeting employers who exploit vulnerable workers, there has been a recent Bill introduced that seeks to increase penalties for employers' breach of record keeping obligations where the breach is a 'serious contravention' that forms part of a deliberate and systematic pattern of conduct.

With the Bill likely to go ahead, employers must be wary that any deliberate breach of employer record keeping obligations forming part of a systematic pattern of conduct may now see individuals facing penalties of up to \$108,000 and \$540,000 for a corporation! This is a 10 times increase to the current

civil penalties and demonstrates the FWO's commitment to holding businesses and individuals liable and accountable for such breaches.

The Bill also proposes to increase maximum civil penalties where a person makes or keeps a record that they know is false or misleading and for giving a pay slip that they know is false or misleading. Again, this can result in fines of up to \$108,000 and \$540,000 for a corporation!

In Summary...

It is not only good practice to keep adequate employee records, but a **legal** requirement. With the FWO's power to conduct random audits and the ability to inspect employment records where they suspect there a potential contravention, there really is no excuse for non-compliance.

If you would like more information surrounding your record keeping and payslip obligations contact the ACAV Employment Relations Team on 1300 854 690 for more information.