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WOMEN'S EMPLOYMENT RIGHTS PROJECT

Funded by the Office for Women, NSW Department of Premier and Cabinet



IMPORTANT NOTE: THIS FACT SHEET ONLY APPLIES TO WOMEN WHO WORK IN NEW SOUTH WALES

## UNPAID WAGES

### DOES YOUR BOSS OWE YOU MONEY?

Unfortunately some workers are not paid the correct wage or hourly rate for the work and the hours they do. In some cases workers are not paid their entitlements such as overtime allowances or penalty rates or payment for public holidays. In other cases employers have not paid a worker for annual leave or long service leave.

### CAN ANY WORKER MAKE A CLAIM?

The right to make a claim for unpaid entitlements applies to **all** workers. Workers who have not been paid all their entitlements can take legal action to recover any money owed to them.

The **time limit** for taking legal action is **six years** from when the money was due to be paid.

### WHERE CAN I MAKE A CLAIM FOR MY UNPAID ENTITLEMENTS?

Any worker who is covered by any award an enterprise agreement or an AWA (Australian workplace agreement) can make a claim in the Chief Industrial Magistrates Court, which is a specialist court that deals with unpaid entitlements claims. This Court is located in the Downing Centre in Sydney.

A worker can also choose to commence an action for unpaid entitlements in any [Local Court](#) in NSW.

Workers who are not covered by an award or an enterprise agreement or an AWA can also commence an action in any [Local Court](#) in NSW. The claim is referred to as common law claims for breach of contract.

Workers not covered by an award or an agreement do have the right to commence an action for unpaid long service leave in the Chief Industrial Magistrates Court.

You should get advice from your union, a solicitor or community legal centre before filing a claim in the [Local Court](#) or Chief Industrial Magistrates Court.

### OTHER OPTIONS TO RECOVER UNPAID ENTITLEMENTS

#### Are you covered by WorkChoices, a federal award or federal certified agreement?

If you are covered by a federal award or certified agreement, you can make a complaint to the Australian Government [Workplace Ombudsman](#), who will assist you with your matter by attempting to resolve your claim with the employer. If the employer will not pay the debt, a certificate is issued which you can take to a NSW Local Court or the Federal Magistrates Court and commence an action against your former employer.

#### Are you covered by a NSW state award or enterprise agreement?

A worker covered by a NSW state award or enterprise agreement has the option of making a complaint to the [NSW Office of Industrial Relations \(OIR\)](#). The OIR will assist with the calculations and try to resolve the claim with the employer. Such a claim must be made **within six months** of you first becoming aware of the unpaid entitlements or **within six months** from the date you finished working for that employer.

## Were you covered by a NSW state award or enterprise agreement and have been transferred to the federal system because of WorkChoices?

If you are employed by a company (where 'Ltd' or 'Pty Ltd' is added to your employer's business name), you are now probably covered by the new WorkChoices laws, which commenced on 27 March 2006.

In this case, you can make a complaint to the Australian Government [Workplace Ombudsman](#) about entitlements that should have been paid on or after 27 March 2006 and a complaint to the NSW Office of Industrial Relations about entitlements that should have been paid before 27 March 2006.

## What is the best option for NSW workers now covered by WorkChoices?

Workers who have outstanding wages and/or other entitlements owed to them, which have accrued under both the NSW state system and the federal system, should file a claim in the NSW Chief Industrial Magistrates Court or any NSW [Local Court](#).

## MONEY MONEY MONEY

### How to find your lost superannuation

If you are between the ages of 18 and 70 and are paid \$450 or more in a calendar month, your employer generally should be making superannuation guarantee contributions for you to a complying fund. It doesn't matter if you are a full-time, part-time or casual employee.

You could be a lost member of a superannuation fund. This often occurs when the fund has been unable to contact you or perhaps your employer made contributions for you but the fund has not received any contributions or rollover amounts in the past two years.

The best place to find your lost superannuation is to go to the [Australian Taxation Office \(ATO\) website](#). The easiest way to search is by using [SuperSeeker online](#) or you can ring them on 13 28 65.

### Finding other lost money

Go to the [Australian Securities and Investments Commission website](#), to find unclaimed money from banking institutions, insurance companies, friendly societies and companies (only money from the compulsory acquisition of shares resulting from takeovers).

Good luck!

## WHERE TO GO FOR HELP?

To calculate the amount of money owed to you, you will need to find the award, agreement or contract that covers your employment. Generally workers are covered by either a NSW state award or NSW agreement or a federal award or federal agreement.

### WORKCHOICES SYSTEM

1. Contact the [Workplace Info Line](#), 1300 363 264 for information about a federal award, federal agreement or the WorkChoices system
2. Contact the [Australian Government Workplace Ombudsman](#), 1300 363 274 for assistance with a complaint about unpaid wages and/or other entitlements

### NSW SYSTEM

Contact the [NSW Office of Industrial Relations](#) 131 628 for information about –

- ❖ NSW awards and how to calculate the debt
- ❖ recovering unpaid wages and entitlements.

**Disclaimer** The information contained in this fact sheet is only intended as a guide to the law and should not be used as a substitute for legal advice. If you have any further questions we strongly suggest you seek legal advice.

The views expressed herein do not necessarily reflect the views of the Office for Women, NSW Department of Premier and Cabinet.

Note: This information applies to people who live in, or are affected by, the law as it applies in the State of New South Wales, Australia.

The information contained in this fact sheet is current as at 1 July 2007.