

Unpaid Wages and Entitlements

What can you do when your employer has gone bankrupt or entered liquidation?

WHAT IS THE FAIR ENTITLEMENTS GUARANTEE (FEG)?

FEG is an Australian Government scheme to ensure employees are not underpaid as a result of their employer's bankruptcy or liquidation.

It is set up to be a scheme of last resort. So, employees must have exhausted all other options for recovering the debt before applying to the scheme.

WHAT IS BANKRUPTCY OR LIQUIDATION?

Bankruptcy is a legal process that applies only to individuals. An individual can go voluntarily bankrupt or can be made bankrupt by someone to whom they owe money. When the court declares someone bankrupt a trustee is appointed to manage the individual's finances. Your employer may be made bankrupt if they are a sole trader or in a partnership.

Liquidation is the formal process of winding up a company, often due to financial difficulties. In this situation a liquidator is appointed to handle the affairs of the company.

HOW DO I KNOW IF MY EMPLOYER IS BANKRUPT OR IN LIQUIDATION?

Sometimes it can be difficult to tell whether your employer has entered bankruptcy or liquidation. If you feel comfortable you can ask your employer, alternatively, if your employer is a company, you can conduct a search through the ASIC website which can provide this information. This is done by searching the 'Companies and organisations' register – the free search will show you basic information about whether the company is in external administration.

The link to this online service is here: asic.gov.au/online-services/search-asic-s-registers/companies-and-organisations/

If you are still unsure you may wish to seek legal advice.

STEPS TO TAKE BEFORE A FEG APPLICATION.

If your employer is a company, you can get in touch with the liquidator about recovering your unpaid wages.

If your employer was a sole trader or partnership, you will need to get in touch with the Australian Financial Security Authority (1300 364 785).

WHO IS ELIGIBLE FOR THE FEG SCHEME?

To be eligible for the scheme you must satisfy the following:

- Your employment with the relevant employer must have ended.
- Your employer entered liquidation or bankruptcy after 5 December 2012.
- The end of your employment was because of the insolvency of your employer, or it occurred less than six months before a liquidator or trustee was appointed, or you were terminated by the liquidator or trustee.
- You are owed employment entitlements.
- You have taken reasonable steps to prove those debts in the winding up or bankruptcy of your employer
- If you were owed employment entitlements before the insolvency event occurred, you took reasonable steps to have them paid.
- At the time your employment ended, you were an Australian Citizen or permanent resident or have a special category visa (a visa that allows you to stay and work in Australia at the time that your employment ended).

There are certain people who are excluded from the FEG scheme. Examples of excluded people are those who have a personal connection with their employer (e.g., relative or partner of a director of the company, or a director of the company) and contractors who converted to employee status within six months of the employer entering insolvency.

HOW DO I APPLY?

You will need to fill out the FEG claim form available on the Department of Employment's website. To complete this form, you will need to know:

- The details of your employer;
- Whether you were employed under an award/ determination/ order etc. and its name;
- Your salary/wage;
- How much you are owed from your employer; and
- What steps you have taken to recover the money owed to you.

You will also need to provide a certified copy of evidence of your citizenship or residency status e.g., passport, birth certificate, visa. While it not compulsory it is also recommended that you provide the following documents:

- Documents that show your working arrangements e.g., pay slips, separation certificates.
- Bank statements for the 13 weeks prior to insolvency and the 30 days after your employment ended.
- A letter offering new employment, if applicable.
- A workers compensation payment statement, if applicable.

ARE THERE TIME LIMITS?

You have 12 months from the date your employment ended or 12 months from an insolvency event, whichever is the later date.

If your employer was made bankrupt, you also need to ensure you make your claim before the bankruptcy is discharged (ended).

WHAT CAN I GET FROM FEG?

Under the FEG scheme you can claim:

- Up to 13 weeks of unpaid wages
- Annual Leave
- Long Service Leave
- Payment in lieu of notice (up to 5 weeks)
- Redundancy pay (up to 4 weeks per full year of service).

Payments are capped at \$2,529 per week. If you earned over this amount the scheme will only cover up to this amount per week, and any annual leave, long service leave, payment in lieu and redundancy pay will be calculated using this amount. Any other payments owing over this amount will need to be recovered from the liquidator.

WHAT IF MY EMPLOYER WENT INTO LIQUIDATION OR BANKRUPTCY BEFORE 5 DECEMBER 2012?

If this is the case, you are not entitled to claim under the FEG scheme. You may, however, be able to claim under the General Employee Entitlements and Redundancy Scheme (GEERS). If you think you may be eligible to apply under GEERS, contact the FEG Hotline (details listed below).

WHAT ABOUT MY SUPERANNUATION?

The Australian Tax Office handles all issues with superannuation. If your employer hasn't been paying the required super, you should lodge a complaint with the ATO and also contact the person managing your former employer's insolvency to discuss a claim as an employee creditor.

NEED MORE INFORMATION?

Contact the FEG Hotline on 1300 135 040 or visit www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/Pages/default.aspx

This information is current 25 August 2021 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.