

RECORD-KEEPING

This Fact Sheet provides information about the record-keeping and pay slip requirements under the *Fair Work Act 2009* (Cth) (FW Act). Most of these requirements are the same as under the *Workplace Relations Act 1996* (Cth). There are some new requirements such as the need, from 1 January 2010, for an employee record to include a record of the employer's Australian Business Number.

Requirements for employee records

An 'employee record' for the purpose of the FW Act includes a record of personal information relating to the employment of an employee including:

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

Employee records must be legible, in English and can be computerised.

Employee records must be accurate and not be altered except to correct a record with the correction being recorded as such. An employer must not make or make use of an entry in an employee record if the person does so knowing the entry is false and misleading.

Details required for employee records

This table lists the details required for employee records that must be kept by an employer:

CATEGORY	REQUIRED DETAILS
General	<ul style="list-style-type: none"> • 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 of the employer.
Pay	<ul style="list-style-type: none"> • the rate of remuneration paid to the employee • the gross and net amounts paid to the employee • any deductions made from the gross amount paid to the employee • a record of hours worked by casual or irregular part-time employees who are guaranteed a basic periodic rate of pay • details of any incentive-based payment, bonus, loading, penalty rate, monetary allowance, or other separately identifiable entitlement.
Overtime	<ul style="list-style-type: none"> • the number of overtime hours worked by the employee each day or when the employee started and ceased working overtime hours, if an overtime loading or penalty rate must be paid to the employee

Averaging of hours	<ul style="list-style-type: none"> if the employer and employee agree in writing to an averaging of the employee's hours of work, the employer must keep a copy of that agreement.
Leave	<ul style="list-style-type: none"> details of any leave taken by the employee details of the balance of the employee's entitlement to that leave from time to time if the employer and employee agree to cash out an accrued amount of leave, a copy of the agreement, the rate of payment for the amount of annual leave that was cashed out and when the payment was made.
Superannuation Contributions	<ul style="list-style-type: none"> the amount of the contributions made the period over which the contributions were made the date on which each contribution was made the name of any fund to which the contribution was made the basis on which the employer became liable to make the contribution, including: <ul style="list-style-type: none"> a record of any election made by the employee as to the fund to which contributions are to be made the date of any relevant election.
Individual flexibility arrangement	<ul style="list-style-type: none"> if the employer and employee agree to an individual flexibility agreement, a copy of the agreement and a copy of any notice or agreement that terminates the agreement.
Guarantee of annual earnings¹	<ul style="list-style-type: none"> if an employer gives a guarantee of annual earnings, a copy of the guarantee if the guarantee of annual earnings is revoked, the employer must keep a record of the date on which the guarantee is revoked.
Termination of employment	<ul style="list-style-type: none"> whether the employment was terminated by consent, by notice, summarily or in some other manner (which must be specified) the name of the person who acted to terminate the employment.

Keeping employee records

Employee records which contain the information in the table above must be kept for 7 years.

Employees and former employees may access their own records

An employee or former employee may request a copy of employment records, though employees can only request copies of their own records. Employers should take care that no access is given to the records of other employees. Where a record requested by an employee or former employee is kept at the employer's premises, the employer must:

- make a copy of the record available to the person requesting a copy at the employer's premises within three business days; or
- post a copy of the record within 14 days of receiving the request.

Where the record is not kept at the employer's premises, the employer must, as soon as possible after receiving the request, make a copy of the employee record available at the employer's premises or post a copy to the employee.

¹ The FW Act provides that a modern award will not apply to 'high income employees'; a high income employee is an employee who has 'guaranteed annual earnings' that are more than the high income threshold, which is \$108,300 per annum indexed annually from 1 July.

Access to employee records by inspectors

Employee records must be readily accessible to an inspector and be in a form that allows an inspector to determine the employee's entitlements and whether the employee is receiving those entitlements.

Employee records following transfer of business

Where there is a transfer of business, the old employer must transfer to the new employer each employee record concerning a transferring employee. For further details on transfer of business see Master Builders Fact Sheet 4.

Where a transferring employee becomes an employee of the new employer after the time of transfer, the new employer must ask the old employer to provide the transferring employee's records. The old employer must comply with such a request.

Payslips

An employer must issue to the employee a written pay slip relating to each remuneration payment made by the employer to the employee. The pay slip must be issued within one day of the payment to which the pay slip relates being made to the employee, either electronically or as a hard copy. The pay slip must contain the following information:

- the name of the employer and the name of the employee;
- the date on which the payment to which the pay slip relates was made;
- the period to which that pay slip relates;
- the gross amount of the payment and the net amount of the payment;
- any amount paid that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement;
- on or after 1 January 2010 – the Australian Business Number (ABN) (if any) of the employer;
- the details in respect of each amount deducted from the gross amount of the payment including the name, or the name and number, of the fund or account into which the deduction was paid;
- if the employee is paid at an hourly rate of pay:
 - the ordinary hourly rate;
 - the number of hours in that period for which the employee was employed at that rate; and
 - the amount of the payment made at that rate
- if the employee is paid at an annual rate of pay — that rate as at the latest date to which the payment relates; and
- if the employer is required to make superannuation contributions for the benefit of the employee:
 - the amount of each contribution made by the employer during the period to which the pay slip relates;
 - the name, or the name and number, of the fund to which the contribution was made; and
 - the amounts of contributions that the employer is liable to make in relation to the period to which the pay slip relates and the name, or the name and number, of any fund to which the contributions will be made.

Breaches of record-keeping requirements

Civil penalties apply if an employer breaches the requirements for employee records and pay slips. The maximum penalty that can be ordered for each contravention of a civil penalty provision is \$3,300 for an individual and \$16,500 for a body corporate.

FOR FURTHER INFORMATION

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Disclaimer: This information is provided as general advice on the workplace relations system. It does not constitute legal advice and it is always advisable to seek further information regarding specific workplace relations issues.