

SUPERANNUATION EMPLOYER OBLIGATIONS

Under the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee (Charge) Act 1992, employers are required to contribute a percentage of their employees' earnings into a nominated superannuation fund. These contributions will provide an employee with a lump sum payment or pension when they retire.

Eligibility

Superannuation is payable if an employee:

- > is under 18 years old AND is paid \$450 or more (before tax) in a month AND works over 30 hours per week;
- > is 18 years old or over AND is paid \$450 or more (before tax) in a month;
- > is 18 years old or over AND is a private or domestic worker AND is paid \$450 or more (before tax) in a month AND works more than 30 hours per week.

Check your relevant industrial instrument (Modern Award/Enterprise Bargaining Agreement) for more beneficial terms.

Note: *Private or domestic worker* means a person who is privately engaged e.g. a nanny or housekeeper.

Compulsory contribution

Employers must pay 9.5% of an employee's 'ordinary time earnings' in superannuation. This will increase to 12% by 1 July 2025 as per the following table:

Financial Year	Rate (%)
1 July 2014 – 30 June 2015	9.5
1 July 2015 – 30 June 2016	9.5
1 July 2016 – 30 June 2017	9.5
1 July 2017 – 30 June 2018	9.5
1 July 2018 – 30 June 2019	9.5
1 July 2019 – 30 June 2020	9.5
1 July 2020 – 30 June 2021	9.5
1 July 2021 – 30 June 2022	10
1 July 2022 – 30 June 2023	10.5
1 July 2023 – 30 June 2024	11
1 July 2024 – 30 June 2025	11.5
1 July 2025 – 30 June 2026 and onwards	12

Contributions are paid to **all employees** (full-time, part-time and casuals), including those working in Australia temporarily.

Ordinary Time Earnings

Ordinary time earnings are generally what an employee is paid for their ordinary hours of work, including commissions, allowances, bonuses and paid leave. The following checklist shows which payments the Australian Taxation Office (ATO) considers as salary or wages and ordinary time earnings. Superannuation is payable on Ordinary Time Earnings.

Payment Types	Salary or wages?	Ordinary time earnings?
Awards and agreements		
No ordinary hours of work stipulated	Yes	Yes
Overtime - general	Yes	No
Overtime – where an agreement removes the distinction between ordinary and other hours	Yes	Yes
Piece-rates – no ordinary hours of work	Yes	Yes
Shift loadings	Yes	Yes
Allowances*		
Expense allowances expected to be fully used <i>Example: a pre-determined mobile phone allowance for work use, expected to be fully expended in the course of employment.</i>	No	No
Danger allowance	Yes	Yes
Retention allowance	Yes	Yes
Unconditional extra payments <i>Example: an allowance of \$500 per month paid to an employee for the purpose of entertaining clients. It is paid irrespective of whether the employee spends the money.</i>	Yes	Yes
Payment of expenses		
General reimbursements	No	No
Reimbursement of travel costs	No	No
Petty cash	No	No
Unfair dismissal payments	No	No
Workers compensation (including top-up payments) where work is not performed***	No	No
Workers compensation (including top-up payments) where work is performed	Yes	Yes
Leave Payments		
Pay for annual leave, sick leave and long service leave taken	Yes	Yes

Annual leave loading – where demonstrably referable to a loss of opportunity to work overtime**	Yes	No
Annual leave loading – All other times**	Yes	Yes
Parental leave	No	No
Termination Payments		
Accrued annual leave, sick leave and long service leave paid as a lump sum on termination	Yes	No
Payment in lieu of notice	Yes	Yes
Bonuses		
Performance bonus	Yes	Yes
Christmas bonus	Yes	Yes
Ex-gratia but relating to ordinary hours of work	Yes	Yes
Bonus relating to overtime only Example: An employee works overtime to prepare a report. The report is sold by the employer and the employer passes on some of the proceeds to the employee in the form of a bonus.	Yes	No

Additional requirements under modern awards

It is important to note that a **modern award** may impose additional requirements on employers with respect to superannuation. There is no 'standard' superannuation clause across the 122 awards (therefore it is important to check the award); however it is common for an award to:

- > specify which fund an employer must make superannuation contributions in to; and
- > require an employer to make superannuation contributions during an employee's absence on workers compensation

*Superannuation and Allowances

Expenses and reimbursements

There are certain times where an employee is expected to spend money in the course of their duties. During these times the employer might reimburse the employee for the money spent or give the monies to the employee for the future use.

Expenses

An expense is where the employer provides a sum of money to the employee with the expectation it will be fully used. The employee should be asked to account for any unspent amount. The money provided is not considered salary or wages as it is not a reward for services, therefore superannuation is not payable.

Reimbursements

A reimbursement is where the employee can demonstrate monies were spent in the course of their duties. Superannuation is not payable as the money is not salary or wages. It can be helpful to ask the employee to produce evidence of the money spent.

Allowances and loadings

Applicable industrial instruments afford employees allowances or loadings for certain conditions when the employee is working. These are subject to superannuation, unless:

- > they are an expense or reimbursement as described above
- > They relate solely to the performance of overtime rather than ordinary hours
- > The allowance is a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986*

Examples of allowances or loadings where superannuation is payable:

- > a 'site allowance' paid fortnightly at a flat rate in acknowledgement of the displacement an employee undergoes when a job requires work in a remote location;
- > a 'casual loading' of 25% of the basic ordinary time rate of pay paid to a casual worker in lieu of any fixed, regular minimum hours of work and of paid leave entitlements;
- > a 'dirt allowance' paid as a flat rate in acknowledgement of the conditions in which the work is undertaken;
- > a 'freezer allowance' paid at the rate of an extra \$2.50 per hour to employees, such as some supermarket employees, who perform most of their duties in cold storage facilities.

Special case: On Call Allowance

This allowance is payable for the employee making themselves available for work and is separate to the monies owing for time worked. Therefore the allowance is not ordinary time earnings and superannuation is **not** payable.

Superannuation and annual leave loading

On 12 March 2019 the Australian Taxation Office (ATO) clarified their position on whether superannuation is payable on annual leave loading. Annual leave loading is considered ordinary time earnings (OTE) unless there is a written agreement stating otherwise.

Key points:

- > The ATO issued a clarifying decision, the Superannuation Guarantee has not changed
- > The clause in the Superannuation Guarantee still reads as follows:

"By way of exception an annual leave loading that is payable under some awards and industrial agreements is not OTE if it is demonstrably referable to a notional loss of opportunity to work overtime. However, the loading is always included in 'salary or wages'"

- > Superannuation is payable on annual leave loading unless there is a written agreement between the employer and the employee that states otherwise or the wording in the applicable industrial instrument clarifies the reason for the entitlement (i.e. includes a statement to say annual leave loading is payable due to a loss of opportunity to work overtime)
- > A written agreement will need to clarify both the reason for the annual leave loading entitlement and reflect a mutual understanding from both parties. This agreement may be in a policy.

Compliance for past quarters

A business may be liable for past quarters where the business did not pay superannuation on annual leave loading.

Employers should consider what evidence exists to demonstrate reasonable grounds for a historical self-assessment to support a non-payment of superannuation on annual leave loading. This evidence would need to demonstrate the reason for annual leave loading being due to a loss in ability to work overtime.

Maximum contribution base

For the financial year 2020-21 employers are required to pay superannuation contributions on employee's earnings up to \$57,090 per quarter. This is known as the "maximum contribution base" and is indexed annually. Employers are not required to make superannuation contributions on earnings in excess of this base.

Frequency of contributions

Superannuation contributions must be paid to an employee's nominated fund at least four (4) times per year. Payments must be made by the quarterly payment cut-off date shown below:

Quarter	Due date for payment of superannuation
1 July – 30 September	28 October
1 October – 31 December	28 January
1 January – 31 March	28 April
1 April – 30 June	28 July

When a due date falls on a weekend or public holiday, employers can make the payment on the next working day.

Employers may choose to pay contributions more regularly than quarterly.

SUPERANNUATION AND CONTRACTORS

Who pays superannuation in an independent contractor relationship (contract for services)?

The Superannuation Guarantee (Administration) Act 1992 defines 'employee' for the purposes of superannuation liability. Section 11 states "if a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract". This means that in some cases the business may be liable for superannuation payments (even in a genuine independent contractor relationship). Where the contract for services is principally or wholly for parts then the business may not be liable. The business may also avoid liability if the independent contractor invoices through a Proprietary Limited Company (Pty Ltd) i.e. the person working for the business could be seen as an employee of the Pty Ltd Company rather than the business for whom they provide services.

For further assistance please call the Workplace Relations Advice Line on 8662 5222. Assistance is also available through the following link to the [Australian Taxation Office](#).

FREQUENTLY ASKED QUESTION

Is there an upper age limit on Superannuation Contributions?

On July 1 2013 the Superannuation Guarantee (Administration) Act 1992 was amended. This amendment removed the exclusion that salary or wages paid to an employee over 70 years of age are not applicable for determining the individual's superannuation guarantee shortfall (section 19 and section 27(1)(a)). In practice, prior to 2013, employees over 70 were not paid superannuation.

The application of the 2013 amendment means mandated employer contributions will need to be paid into the nominated superannuation fund regardless of the employee's age.

Age restrictions continue to apply for non-concessional contributions.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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