

RECORD KEEPING REQUIREMENTS



See Fair Work Regulations Part 3-6 Division 3

Employers must keep records in relation to workers for seven years from the date an entry was last changed. Records must be legible and readily accessible to a Fair Work Ombudsman inspector. Failure to comply with the requirements could result in a penalty.

What the records must include:

General

- > the name of both the employer and employee
- > whether the employment is full-time, part-time, temporary or casual
- > ABN of the employer
- > the start date of the employment

Pay

In addition to providing payslips to employees (see below), the employer must keep records of all payments including:

- > the employee's rate of pay
- > guarantee of annual earnings as promised by the employer (where applicable)
- > the gross and net amounts paid
- > any deductions made from the gross amount
- > any separately identifiable amounts payable including: incentive-based payments, bonuses, loadings, penalty rates etc.

Hours worked

- > If the employee is entitled to paid overtime, the records must state either:
 - the number of overtime hours worked each day; or
 - when the employee started and ceased working overtime.
- > Records must be kept of any written agreements to average the employee's "reasonable additional hours" over an agreed period.
- > For casual or irregular part-time employees who are guaranteed a basic periodic rate of pay, records must be kept of the hours worked.

Leave

Records of any leave entitlements must be kept and must state:

- > the accrual of the leave
- > any leave taken by the employee
- > the balance of annual leave entitlements (recorded from time to time)
- > if an employee elects to forego (i.e. 'cash in') an entitlement to leave the records must include:
 - a written copy of that election

- the rate of payment for the amount of leave foregone and the date of payment.

Superannuation Contributions

Records of superannuation contributions must include the:

- > amount of the contributions
- > date of the contributions
- > period over which the contributions were made
- > name of the fund to which they were made
- > basis on which the employer is required to make the contributions. This includes recording the employee's election of super fund and the date of that election.

Individual Flexibility Arrangements

Records of individual flexibility arrangements must include:

- > a copy of the agreement
- > a copy of a notice that terminates the agreement

Termination of Employment

If an employee's employment is terminated, a record must be kept of the name of the person who acted to terminate the employment and whether it was terminated by:

- > consent;
- > notice;
- > summarily; or
- > in another specified manner.

Transfer of Business

When a business is transferred or assigned (in whole or in part) and the new employer employs any transferring employees, the old employer must transfer to the new employer all the records which they are required to keep.

The new employer must request the records from the old employer, who must provide them. Once received, they must be kept as if they were made by the new employer (but are still considered to be made at the time the old employer actually made them).

The new employer is not required to make records for the previous employment which have not been received.

Alterations, Corrections and False Entries

Employers must correct an error in a record as soon as they are aware of it. When the error is corrected, a record must be kept of the nature of that error. Besides correcting errors in this way employers must not allow records to be altered.

If a person knowingly makes a false or misleading entry they may be personally liable. A person may also be liable if they make use of such an entry knowing it is false or misleading.

Inspection and Copying of Records

Employers must make copies of records available if they are requested by a workplace inspector. Employees and former employees may also request a copy of their own records, in which case the employer must provide a copy.

The records must be made available at the workplace within three business days, or by posting or faxing a copy within 14 days of receiving the request.

If asked, the employer must tell the person where the records are kept. The employer may also be interviewed about the records during ordinary working hours and they must give reasonable assistance in the interview.

Pay slips

Under current Regulations, employers must issue written pay slips to employees within one day of each payment. The pay slip must include the particulars set out below:

- > the name of the employer and employee
- > the Australian Business Number (ABN) of the employer
- > the date on which the payment was made
- > the period to which the pay slip relates
- > if the employee is paid at an hourly rate:
 - the ordinary hourly rate; and
 - the number of hours in that period paid at that rate; and
 - the amount of the payment made at that rate;
- > if the employee is paid at an annual rate – the rate at the latest date of the pay period
- > the gross and net amount of the payment
- > the amount of any incentive-based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlements
- > the details of each amount deducted from the gross amount, including the name (and number if applicable) of the fund or account into which the deduction was paid
- > if the employer is required to make superannuation contributions**:
 - the amount of each contribution during the payment period
 - the name of any fund to which that contribution was made

** “Contributions” does not include a contribution in respect of a defined benefit interest in a defined benefit fund within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*.

Legislation

Legislation	Document	Section	Time
Fair Work Act 2009 (Cth)	Record of employees	s535	7 years
Occupational Health and Safety Act 2004 (Cth)	Record of notifiable incident	s38 (4)	5 years

> WORKPLACE RELATIONS FACTSHEET

<u>Australian Charities and Not for Profit Commission Act 2012 (Cth)</u>	Financial and operational records	Part 3-2 s55.5	7 years
<u>Corporations Act (2001) (Cth)</u>	Financial records	s286 - 289	7 years
<u>Income Tax Assessment Act (1936) (Cth)</u>	Records of all transactions and other acts	s262A	5 years
<u>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)</u>	Original, copy or extract of a record showing information relating to the provision of a designated service	Part 10 s107 (2)	7 years
<u>Financial Transaction Reports Act 1988 (Cth)</u>	Any account or signatory information including information released by law or information obtained when obtaining account information Register of document released and exempt significant cash transactions	s23; s12-13	7 years Indefinitely
<u>Patents Act 1990 (Cth)</u>	Standard patents	s67	20 years (term of patent)
<u>Trade Marks Act 1995 (Cth)</u>	Trade marks	s72	10 years (from the filing date)
<u>Copyright Act 1968 (Cth)</u>	Copyright	s33	70 years (after the end of the year of the authors death)
<u>Privacy Act 1988 (Cth)</u>	Personal information	s11.2	Until the information is no longer needed for any purpose

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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