

FURTHER UPDATE - RECORD KEEPING

As a result of amendments to the Regulations in December 2006, the following new provisions for record keeping become enforceable on 27 March 2007.

These new record keeping provisions replace all of the old provisions.

Record Keeping

1. All records that are required to be kept must be in a legible form in English. The records must be in a form that is readily available to a workplace inspector and be in a condition that allows a workplace inspector to determine the employee's entitlements and whether the employee is receiving the entitlements.
2. The employer must keep general employment records that contain the name of the employer, the name of the employee, whether the employment is full time or part time, temporary or casual and the date on which the employee's employment began.
3. If the employer and the employee agree to average the employee's hours of work over a period, a written copy of that agreement must be kept.
4. If the employee is entitled to be paid a penalty rate or loading (however described) for overtime hours actually worked by the employee, the employer must keep a record that shows:
 - The number of overtime hours worked by the employee each day; or
 - When the employee started and ceased working overtime hours.
5. The employer must keep records about any leave that the employee is entitled to take, for example annual leave, personal/carer's leave and other leave.

Leave records must contain:

 - the accrual of that leave;
 - any leave taken by the employee; and
6. If an employee has elected to cash out annual leave (in accordance with a Workplace Agreement) the employer must keep:
 - the balance of the employee's entitlement to each type of leave from time to time.
 - a copy of the employee's written election; and
 - a record of the rate of payment for the amount of annual leave cashed out and when the payment was made.
7. Where the employer is required to make superannuation contributions in relation to an employee, the superannuation records relating to that employee must contain:
 - the amount of contributions made;
 - the period over which the contributions were made;
 - the dates on which the contributions were made;
 - the name of any fund to which the contributions were made; and
 - the basis on which the employer became liable to make the contributions, including:
 - (i) keeping of a record of any election made by the employee as to the fund to which contributions are to be made; and
 - (ii) the date any relevant election was made.

8. When an employee's employment is terminated, the employer must keep a record containing:
- whether the employee's employment was terminated by consent, by notice, summarily, or in some other manner (specifying the manner); and
 - the name of the person who acted to terminate the employment.
9. If the employer becomes the successor, transmittee or assignee of the whole, or part of the business of another person (the old employer), the employer must do the following in relation to a transferring employee:
- request all of the employee's records that the old employer is required to keep;
 - keep the transferred records as if they had been made by the employer at the time they were made by the old employer.
10. If the employee is entitled to be paid an incentive, bonus, loading, penalty rate or allowance then a record of these must be kept.
11. If an employee is a casual or irregular part-time employee who is guaranteed a basic periodic rate of pay (for example a set hourly rate) the employer must keep a record of the hours worked by the employee.
12. WorkChoices has introduced specific requirements in relation to the issuing of payslips to employees.
- The employer must issue a written payslip relating to each payment by the employer of an amount to an employee as remuneration. The payslip must be issued within one day of the payment to which the payslip relates.
- An employee's payslip must include the following details:
- the name of the employer;
 - the name of the employee;
 - the date on which the payment to which the payslip relates was made;
 - the period to which the payslip relates;
- if the employee is paid an hourly rate;
 - (i) the ordinary hourly rate;
 - (ii) the number of hours in that period for which the employee was employed at that rate; and
 - (iii) the amount of the payment made at that rate;
 - if the employee is paid an annual rate - that rate as at the latest date to which the payment relates;
 - the gross and net amounts of the payment;
 - any amount paid that is paid as an incentive based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlement which the employee has;
 - 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 to which the deduction was paid; and
 - if an employer is required to make superannuation contributions for an employee, the amounts of each contribution that the employer has made or is liable to make during the period to which the payslip relates and the name of the fund.
13. The employer must keep, or cause to be kept, the records specified above for a continuous period of seven (7) years after the date on which the record was made.
14. Unless the employer is correcting an error, it must not alter a record or allow a record to be altered. Where an error needs to be corrected, this must be done as soon as the employer becomes aware of the error and the record must record the nature of the error with the correction.
15. A person must not make, or make use of, an entry in a record required to be kept if the person does so knowing that the entry is false or misleading.

16. The grace period for employers to implement the record keeping requirements, is about to end. After 26 March 2007 employers may be prosecuted for a breach of the record keeping requirements.
17. An employee (or former employee) to whom a record relates or a workplace inspector, may request a copy of an employment record. When a request is made for a record and that record is kept at the employer's premises, the record must be made available to the employee or inspector within 3 days. Alternatively the record may be posted within 14 days (or in the case of an inspector the record may be sent by fax).
18. A record that was required to be kept for a period of time in accordance with the law before WorkChoices continues to apply. To the extent necessary, penalty provisions and a workplace inspector's powers in relation to the keeping of records pre-WorkChoices also continue to apply.

CONTACT US

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