

Claiming Unpaid Entitlements (more than \$20,000)

Fact Sheet



This fact sheet covers:

- ✔ What are 'Unpaid Entitlements'?
- ✔ How to make an unpaid entitlements claim for more than \$20,000 in the Federal Circuit Court
- ✔ Orders the Federal Circuit Court can make

1. What are 'Unpaid Entitlements'?

If you think your employer owes you money, you might be able to make a claim for unpaid entitlements in the Federal Circuit Court (**FCC**).

Your right to claim unpaid wages and certain entitlements are usually governed by a number of instruments, including the National Employment Standards (contained in the *Fair Work Act 2009* (Cth) (the **FW Act**)), your contract of employment and any award or enterprise agreement that applies to you.

If the amount you are claiming is less than \$20,000, you can choose to have your claim dealt with as a small claims proceeding (see '**Applying to the Fair Work Small Claims Division**'). A small claims proceeding is quicker, cheaper and more informal than regular court proceedings. You may still make a small claims application if you feel you are owed more than \$20,000, however the court will only make an order for a maximum of \$20,000 if you win your case.

If you wish to claim more than \$20,000, you can bring a general application to the Fair Work division of the FCC. This claim can also be made in the Federal Court of Australia (**FCA**), although this is generally only done where the claim is large and complex.

2. How can I make a general application for unpaid entitlements to the Federal Circuit Court?

You can make a general application for unpaid entitlements to the FCC if:

- you are an employee, former employee or outworker (an employee who performs work at home or a similar place), but you are not an independent contractor;
- the amount you are claiming is more than \$20,000; and
- (for employees) you are making a claim for an unpaid entitlement from one of the following:
 - the FW Act;

- a modern award;
- an enterprise agreement;
- a workplace determination;
- a Fair Work Commission (FWC) order; and/or
- any entitlements in your employment contract that are also covered by the National Employment Standards (known as Safety Net Contractual Entitlements) (these include leave payments, notice periods and redundancy pay).
- (for outworkers) you are making a claim for an unpaid entitlement under a modern award.

COSTS ORDERS

A costs order is where the court orders one party to pay the other party's legal costs. The court may make a costs order against you if you are unsuccessful in claiming for unpaid entitlements. This may happen in circumstances where you have acted unreasonably or where the main purpose of your claim was to harass or embarrass your employer.

2.1 Examples of when you can make a claim

You can make a claim when:

- recovering unpaid wages, including overtime;
- recovering unpaid leave entitlements, including annual leave; and
- recovering unpaid penalties or allowances, e.g. public holiday pay.

TIME LIMITS

You must make your application **within 6 years** of when you were supposed to receive your employment entitlement. You are better off making your claim as early as possible as the employer's ability to pay you may reduce over time, or it may become more difficult to prove the claim.

2.2 How do I apply?

Before applying to the Court

Before applying to the Court for your unpaid entitlements claim, you should a) send your employer a 'letter of demand' which outlines your claim and gives them the opportunity to pay you your outstanding entitlements; and b) contact the [Fair Work Ombudsman](#) to discuss your claim. The following process should be followed if these steps are unsuccessful:

Step 1: Fill out the forms

You need to fill out:

- An **Application form – Fair Work Division**

- An **affidavit** (or a [Statement of Claim](#)) - this is a formal statement outlining your claim, the evidence in your favour and your version of events. Your affidavit (or statement of claim) may contain schedules, spreadsheets or calculations outlining what you say you are owed and why.

(**Note:** If you intend to commence proceedings in the Federal Court, different court procedures may apply)

You can find copies of these forms here under 'Industrial Law':

www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics

Your application should clearly set out what entitlements you claim are owed, where these entitlements come from (for example, your employment contract or your modern award) and you may wish to make your claim clearer by attaching schedules or spreadsheets with your calculations.

Step 2: File the forms

Take four copies of your forms in person to the nearest court registry. You can find the addresses and business hours on the [Federal Circuit Court website](#).

You need to file the original completed documents with the court registry. The original documents will then be stamped by the court and returned to you and you will be given a hearing date for your claim.

FILING FEE

The filing fee for an unpaid entitlements claim of more than \$20,000 is **\$615**.

You need to pay the filing fee when you file your documents.

You may not have to pay the filing fee if you hold certain government concession cards or are suffering financial hardship. More information is available on the Federal Circuit Court website:

<http://www.fedcourt.gov.au/forms-and-fees/court-fees/exemptions>

Step 3: Serve the forms on your employer

After you have filed your documents with the Court, you need to give a copy of them to your employer (or other person you are claiming against) so they can respond to your claims.

This must be done **at least 5 business days** before the date of the first hearing.

If your employer is a person, you need to:

- give the forms to them in person; or
- if they won't accept the forms, put them down in their presence and explain what they are.

If your employer is a company, you need to:

- post the forms to the company's registered office (address it to the "Proper Officer");
- take the forms to the registered office and leave it with an employee; or
- hand the forms personally to a director of the company.

TIP

You can check the company's registered address by searching the [ASIC Register](#).

Step 4: Let the Court know you have served the forms on your employer

Once you have served your employer, you need to let the Federal Circuit Court know.

Fill in the [Affidavit of Service \(Fair Work\) form](#) available from the Federal Circuit Court website.

Take the form in to the court registry. The affidavit must be witnessed by a qualified person (for example, a justice of the peace or a lawyer).

3. What orders can the Federal Circuit Court make?

The Court can make a number of orders in unpaid entitlements matters. For example, the Court may order that you attend a mediation conference to attempt to settle your claim with your former employer.

If, following a hearing, the Court decides that your employer owes you money, it can order that your employer pay you the outstanding amounts.

If you are unsuccessful, the Court (in very limited circumstances) may also order that you pay the successful party's legal fees (known as costs).

USEFUL INFORMATION

- Fair Work Ombudsman – [Taking legal action in the small claims court](#)
- Jobwatch – [Making a small claim under the Fair Work Act 2009](#)
- NSW Law Access – [Employment rights](#)
- The Law Handbook (NSW) – [Chapter 22 Employment](#)
- Federal Circuit Court – [Industrial Law](#)
- [Federal Court Rules 2011](#)
- [Federal Circuit Court Rules 2001](#)