

Applying to the Fair Work Small Claims Division

This fact sheet covers:

- ▶ what is a 'Small Claim'?
- ▶ how to apply to the Small Claims Division of the Federal Circuit Court
- ▶ orders the Federal Circuit Court can make.

1. What is a 'Small Claim'?

If you think your employer owes you money, in some cases you can choose to have your claim dealt with as a small claims proceeding.

A small claims proceeding is quicker, cheaper and more informal than regular court proceedings. The court is not bound by any rules of evidence and procedure.

Small claims proceedings are designed to allow people to resolve their claims without lawyers – you need to apply for the court's permission if you want a lawyer to represent you.

2. How can I apply to the Small Claims Division of the Federal Circuit Court

You can apply to the Small Claims Division of the Federal Circuit Court if:

- you are an employee, former employee or outworker (an employee who performs work at home or a similar place) but are not an independent contractor;
- the amount you are claiming is \$20,000 or less; and
- (*for employees*) you are making a claim for an unpaid entitlement from one of the following:
 - the Fair Work Act 2009 (FW Act);
 - a modern award;
 - an enterprise agreement;
 - a workplace determination;
 - a Fair Work Commission (FWC) order; and/or
 - additional contractual entitlements (known as Safety Net Contractual Entitlements) for national system employees.
- (*for outworkers*) you are making a claim for an unpaid entitlement under a modern award.

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?

Step 1: Fill out the forms

You need to fill out 2 forms:

1. Application form – Remember to tick the “Small claims list” box on the first page, and
2. Claim form – (Form 5).

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

Step 2: File the forms

Take 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 returned to you and you will be given a hearing date for your claim.

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>



Filing fee

If a claim is less than \$10,000 the filing fee is \$215.

If the claim is between \$10,000 - \$20,000 the filing fee is \$355.

Step 3: Serve the forms on your employer

After you have filed your documents with the Court, you need to give a copy of your documents 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");
- if they won't accept the forms, put them down in their presence and explain what they are.
- 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 here: [Court Forms](#)

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).



What happens next?

See our factsheet: [Employment Law – Practice and Procedure in the Federal Court and Federal Circuit Court](#).

3. What orders can the Federal Circuit Court make?

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

It may also order that the unsuccessful party pay the successful party's legal fees (known as costs) – in very limited circumstances.



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](#)