



Human Capital Management
& Payroll Software/Services

Decoding Australia's Wage Theft laws: What employers need to know

Article

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In recent years, Australia has been at the forefront of addressing wage theft, an issue that has long plagued the employment landscape. In response to mounting concerns and numerous high-profile cases of underpayment, the Australian government has proposed new national wage theft laws that aim to close the gaps and hold employers accountable for intentionally underpaying their workers. These changes represent a significant shift in the legal landscape surrounding payroll and HR and necessitate a comprehensive review of payroll systems and processes to ensure compliance.

In this article, we will explore the proposed national wage theft laws in Australia and discuss what employers should consider when reviewing their payroll systems to meet these legislative requirements.

Understanding the proposed national Wage Theft Laws

To gain a deeper understanding of the proposed national wage theft laws in Australia, let's begin by examining the key provisions outlined in these legislative changes.

- 1. Criminal Offences for Wage Theft:** Under the proposed legislation, employers found guilty of wage theft could face significant penalties, including hefty fines and even imprisonment for up to ten years. This underscores the seriousness with which the Australian government is approaching the issue of wage theft.
- 2. Increased Protections for Vulnerable Workers:** The legislation also seeks to enhance protections for vulnerable workers, such as migrant workers and casual and gig economy employees. Employers will be required to ensure compliance with minimum wage standards and entitlements for these workers.
- 3. Improved Reporting Mechanisms:** To empower employees to report wage theft, the legislation includes provisions for anonymous reporting and whistleblower protections. This encourages employees to express their concerns without fear of retaliation.
- 4. Record-Keeping Obligations:** Employers will be obligated to maintain accurate records of employees' hours worked and wages paid. Failure to do so could attract penalties.
- 5. Statutory Minimum Wage:** The legislation enshrines the national minimum wage in law, providing greater certainty for workers and employers alike.
- 6. Accessorial Liability for Advisors:** Importantly, the legislation introduces accessorial liability for advisors who knowingly assist employers in underpaying their workers. This means that HR professionals, payroll managers, and others providing advice could also face legal consequences if they are complicit in wage theft.

Comparing with Victorian and Queensland Wage Theft Laws

While the proposed new national laws are a significant development, it's worth noting that Victoria and Queensland have already implemented their own wage theft laws. These state-based laws serve as an essential backdrop to the national legislation.

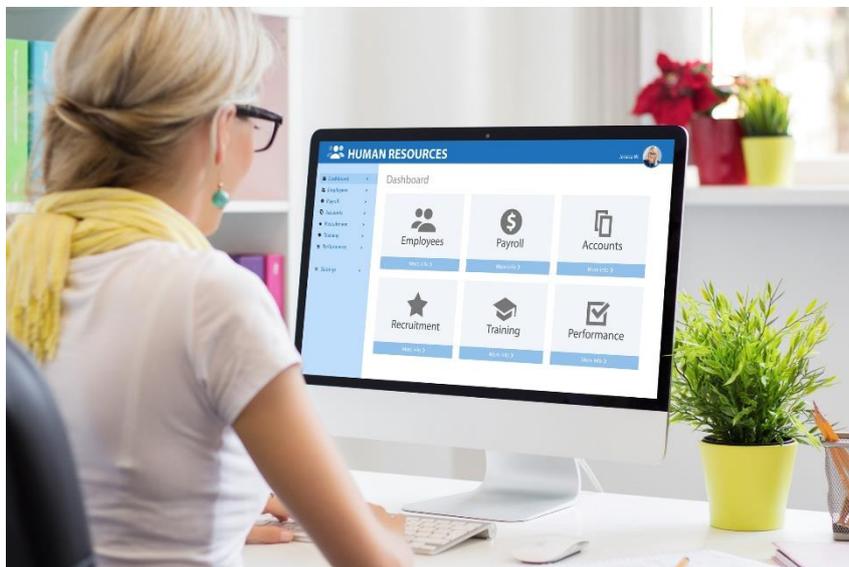
- 1. Victoria's Wage Theft Laws:** Victoria was the first Australian state to criminalise wage theft. The Victorian laws, introduced in 2020, make it an offence for employers to deliberately underpay their workers. Penalties can include fines for individuals and even imprisonment for employers found guilty of wage theft.
- 2. Queensland's Wage Theft Laws:** In Queensland, wage theft laws were also introduced in 2020. These laws criminalise wage theft and set out penalties for employers who intentionally underpay their employees. They include provisions for wage recovery for affected workers.

These state-based laws emphasise the attention wage theft is getting at the regulatory level and requires employers to prioritise compliance at both the state and national levels.

What Employers Should Consider and Review in Their Payroll Systems

With the proposed introduction of new national wage theft laws and existing state-based legislation, employers need to take proactive steps to ensure compliance within their payroll systems. Here are key considerations and areas to review:

1. **Record-Keeping:** Employers must establish robust record-keeping practices to track hours worked, wages paid, and employment agreements. Payroll systems should be configured to generate accurate records that can be easily accessed and audited.
2. **Minimum Wage Compliance:** Review payroll processes to ensure that all employees, including casual and migrant workers, receive at least the statutory minimum wage. This may involve adjustments to pay rates and require regular audits.
3. **Employment Contracts:** Ensure that employment contracts clearly and compliantly outline terms and conditions of employment, including wages, hours of work, and entitlements. Regularly review contracts to ensure they remain compliant with the legislation as it evolves.
4. **Reporting Mechanisms:** Implement anonymous reporting mechanisms within your organisation, if required by law, to encourage employees to report wage theft concerns without fear of retaliation. This can be facilitated through HR software or a dedicated reporting hotline.
5. **Payroll Advisor Compliance:** If your organisation engages external advisors or consultants for payroll and HR matters, require them to prove their compliance with the law. This will ensure they are up to date with the latest legislation and are providing accurate advice. If concerned, seek a second opinion.



6. **Training and Education:** Invest in ongoing training and education for HR and payroll staff to ensure they are well-informed about current laws and best practices. They must also be fully conversant with the software they are using to process payroll and how it will enable compliance. Training could be facilitated via workshops, seminars, and access to updated resources.

7. **Payroll Software Updates:** Regularly update your payroll software to incorporate changes in wage rates, entitlements, and compliance requirements. Good payroll vendors offer automated updates to assist with this.
8. **Audit and Review:** Conduct regular audits of your payroll system to identify and rectify any errors or non-compliance issues promptly. Consider engaging a third-party auditor to ensure impartiality.
9. **Employee Classification:** Ensure that employees are correctly classified as full-time, part-time, casual, or temporary. Misclassification can lead to underpayment issues and expose your organisation to penalties.
10. **Overtime Calculations:** Review your payroll system's algorithms for calculating overtime, ensuring they align with statutory requirements, including penalty rates.
11. **Leave Entitlements:** Ensure that your payroll system accurately tracks and calculates various types of leave, including annual leave, sick leave, and parental leave, in accordance with applicable laws and agreements.
12. **Termination Procedures:** Review the procedures and documentation for terminating employees, ensuring compliance with notice periods and final pay requirements.
13. **Communication with Employees:** Keep employees informed about their rights and entitlements, including clear and compliant payslips that detail wage components, deductions, and accruals.

Lesser-Known Aspects of Compliance

The points mentioned above cover many aspects of payroll compliance, but there are some lesser-known considerations that payroll and HR teams should be aware of:

1. **Superannuation Guarantee:** Ensure that superannuation contributions are made correctly and on time. Remember, incremental increases will take effect until July 2025. Failure to do so can result in significant penalties and liabilities.
2. **Casual Conversion:** Review your obligations regarding casual conversion under the relevant modern awards or enterprise agreements. In some cases, casual employees have the right to request conversion to permanent employment after a certain period.
3. **Underpayment Remediation:** If historical underpayments are identified, it's essential to have a remediation plan in place that ensures affected employees are compensated promptly and fairly.
4. **Employee Records Security:** Safeguard employee records to protect sensitive information. Compliance includes data privacy and security requirements, such as those outlined in the Privacy Act.
5. **Compliance with Modern Awards:** Be aware of the modern awards that apply to your industry and employees. Ensure that your payroll system can handle the specific requirements of these awards.
6. **Award Interpretation:** Payroll staff should have a good understanding of how to interpret modern awards and enterprise agreements, as they can be complex and subject to frequent updates.

7. **Foreign Workers:** If you employ foreign workers, ensure compliance with visa and work entitlements, including any sponsorship obligations.
8. **Long Service Leave:** Familiarise yourself with long service leave legislation in your state or territory, as the rules can vary significantly.
9. **Termination Payments:** Consider the tax implications of termination payments and ensure compliance with tax laws when calculating final payouts to employees.
10. **Contractor vs. Employee Classification:** Correctly classify workers as contractors or employees to avoid misclassification issues. The Australian Taxation Office (ATO) provides guidance on this matter.



How Frontier Software can assist

Navigating the complex landscape of wage theft laws and payroll compliance can be challenging for organisations. Here's where we can help.

1. **Regular Updates:** Frontier Software regularly updates its software to reflect changes in legislation, ensuring that your organisation's payroll system remains compliant without manual intervention.
2. **Reporting and Analytics:** Our in-depth reporting and analytics capability can help you track and audit compliance. These tools can identify discrepancies and provide valuable insights into potential areas of concern.
3. **Training and Support:** Our dedicated training and support services can assist your HR and payroll teams in using their software effectively to meet compliance requirements.
4. **Customisation:** We can configure your solution to your specific needs, including complex employment agreements and industry-specific requirements.
5. **Health Checks:** Our Health Check process will help you identify, assess and address compliance gaps while optimising your system performance.

6. **Integration with Time and Attendance Systems:** Consider implementing our time and attendance system or integrate with a legacy provider to ensure accurate recording of hours worked, reducing the risk of wage theft.

The proposed national wage theft laws in Australia represent a significant step forward in addressing underpayment and wage theft. Employers must take these changes seriously and proactively review their payroll systems and processes to ensure compliance. Partnering with a reputable payroll vendor can greatly assist in meeting these compliance requirements, ensuring that organisations meet their obligations under the law and protect their employees' rights. Wage theft will no longer be a grey area in Australian employment law, and employers who fail to adapt risk facing severe consequences.

As the employment landscape continues to evolve, staying informed and engaged with legislative changes is essential. By taking the necessary steps and seeking expert assistance, organisations can navigate the complex world of payroll compliance and build a fair and legally sound employment environment for all.

To find out more information contact us on 1300 555 884
or visit www.frontiersoftware.com

Disclaimer

This article is not intended to take the form of advice. Every organisation should seek independent advice from a qualified employment lawyer before enacting any changes.

References

1. [HRM Online - Jail Time for Wage Theft: Closing the Loopholes Bill](#)
2. [Australian Payroll Association - New Wage Theft Laws Proposed by the Australian Government](#)
3. [The Sydney Morning Herald - Employers to Face 10 Years Jail, Hefty Fines Under Proposed Wage Theft Laws](#)
4. [Victoria State Government - Victoria's Wage Theft Laws](#)
5. [Queensland Government - Wage Theft](#)
6. [Optimum Legal - How to Avoid Wage Theft and Underpayment Risks](#)
7. [HHR - What is Wage Theft? How Can Employers Meet Workplace Obligations?](#)

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Michael Howard, Founder