

325 Unreasonable requirements to spend or pay amount

- (1) An employer must not directly or indirectly require an employee to spend, or pay to the employer or another person, an amount of the employee's money or the whole or any part of an amount payable to the employee in relation to the performance of work, if:
- (a) the requirement is unreasonable in the circumstances; and
 - (b) for a payment—the payment is directly or indirectly for the benefit of the employer or a party related to the employer.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (1A) An employer (the *prospective employer*) must not directly or indirectly require another person (the *prospective employee*) to spend, or pay to the prospective employer or any other person, an amount of the prospective employee's money if:
- (a) the requirement is in connection with employment or potential employment of the prospective employee by the prospective employer; and
 - (b) the requirement is unreasonable in the circumstances; and
 - (c) the payment is directly or indirectly for the benefit of the prospective employer or a party related to the prospective employer.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) The regulations may prescribe circumstances in which a requirement referred to in subsection (1) or (1A) is or is not reasonable.

Part 4-1—Civil remedies

Division 1—Introduction

537 Guide to this Part

This Part is about civil remedies. Certain provisions in this Act impose obligations on certain persons. Civil remedies may be sought in relation to contraventions of these civil remedy provisions.

Subdivision A of Division 2 deals with applications for orders in relation to contraventions of civil remedy provisions and safety net contractual entitlements, and applications for orders to enforce entitlements arising under subsection 542(1).

Subdivision B of Division 2 sets out the orders that can be made by the Federal Court, the Federal Circuit Court or an eligible State or Territory Court in relation to a contravention of a civil remedy provision.

Division 3 sets out when proceedings relating to a contravention of a civil remedy provision may be dealt with as small claims proceedings.

Division 4 deals with general provisions relating to civil remedies, including rules about evidence and procedure.

Division 4A imposes obligations on responsible franchisor entities in relation to certain contraventions of civil remedy provisions by franchisee entities and on holding companies in relation to certain contraventions of civil remedy provisions by subsidiaries.

Division 5 deals with unclaimed money.

(Fair Work Act 2009)

540 Limitations on who may apply for orders etc.

Employees, employers, outworkers and outworker entities

- (1) The following persons may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:
- (a) an employee;
 - (aa) a prospective employee;
 - (b) an employer;
 - (c) an outworker;
 - (d) an outworker entity.

Employee organisations and registered employee associations

- (2) An employee organisation or a registered employee association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision in relation to an employee, only if:
- (a) the employee is affected by the contravention, or will be affected by the proposed contravention; and
 - (b) the organisation or association is entitled to represent the industrial interests of the employee.
- (3) However, subsection (2) does not apply in relation to:
- (a) items 4, 7 and 14 in the table in subsection 539(2); or
 - (b) a contravention or proposed contravention of:
 - (i) an outworker term in a modern award; or
 - (ii) a term in an enterprise agreement that would be an outworker term if it were included in a modern award.
- (4) An employee organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of:
- (a) an outworker term in a modern award; or
 - (b) a term in an enterprise agreement that would be an outworker term if it were included in a modern award;
- only if the employee organisation is entitled to represent the industrial interests of an outworker to whom the term relates.

Employer organisations

- (5) An employer organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation has a member who is affected by the contravention, or who will be affected by the proposed contravention.

Industrial associations

- (6) An industrial association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if:

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| | <ul style="list-style-type: none">(a) the industrial association is affected by the contravention, or will be affected by the proposed contravention; or(b) if the contravention is in relation to a person:<ul style="list-style-type: none">(i) the person is affected by the contravention, or will be affected by the proposed contravention; and(ii) the industrial association is entitled to represent the industrial interests of the person. |
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- (7) If an item in column 2 of the table in subsection 539(2) refers to an industrial association then, to avoid doubt, an employee organisation, a registered employee association or an employer organisation may apply for an order, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation or association is entitled to apply for the order under subsection (6).

Regulations

- (8) The regulations may prescribe a person for the purposes of an item in column 2 of the table in subsection 539(2). The regulations may provide that the person is prescribed only in relation to circumstances specified in the regulations.