

## **Division 2—Payment of wages etc.**

### **323 Method and frequency of payment**

- (1) An employer must pay an employee amounts payable to the employee in relation to the performance of work:
- (a) in full (except as provided by section 324); and
  - (b) in money by one, or a combination, of the methods referred to in subsection (2); and
  - (c) at least monthly.

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

Note 2: Amounts referred to in this subsection include the following if they become payable during a relevant period:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) leave payments.

- (2) The methods are as follows:

- (a) cash;
- (b) cheque, money order, postal order or similar order, payable to the employee;
- (c) the use of an electronic funds transfer system to credit an account held by the employee;
- (d) a method authorised under a modern award or an enterprise agreement.

- (3) Despite paragraph (1)(b), if a modern award or an enterprise agreement specifies a particular method by which the money must be paid, then the employer must pay the money by that method.

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

### **324 Permitted deductions**

- (1) An employer may deduct an amount from an amount payable to an employee in accordance with subsection 323(1) if:
- (a) the deduction is authorised in writing by the employee and is principally for the employee's benefit; or
  - (b) the deduction is authorised by the employee in accordance with an enterprise agreement; or
  - (c) the deduction is authorised by or under a modern award or an FWC order; or
  - (d) the deduction is authorised by or under a law of the Commonwealth, a State or a Territory, or an order of a court.

Note 1: A deduction in accordance with a salary sacrifice or other arrangement, under which an employee chooses to:

- (a) forgo an amount payable to the employee in relation to the performance of work; but
  - (b) receive some other form of benefit or remuneration;
- will be permitted if it is made in accordance with this section and the other provisions of this Division.

Note 2: Certain terms of modern awards, enterprise agreements and contracts of employment relating to deductions have no effect (see section 326). A

deduction made in accordance with such a term will not be authorised for the purposes of this section.

- (2) An authorisation for the purposes of paragraph (1)(a):
  - (a) must specify the amount of the deduction; and
  - (b) may be withdrawn in writing by the employee at any time.
- (3) Any variation in the amount of the deduction must be authorised in writing by the employee.

### **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.

### **326 Certain terms have no effect**

#### *Unreasonable deductions for benefit of employer*

- (1) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work, if the deduction is:
  - (a) directly or indirectly for the benefit of the employer or a party related to the employer; and
  - (b) unreasonable in the circumstances.
- (2) The regulations may prescribe circumstances in which a deduction referred to in subsection (1) is or is not reasonable.

#### *Unreasonable requirements to spend or pay an amount*

- (3) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term:

- (a) permits, or has the effect of permitting, an employer to make a requirement that would contravene subsection 325(1); or
- (b) directly or indirectly requires an employee to spend or pay an amount, if the requirement would contravene subsection 325(1) if it had been made by an employer.

*Deductions or payments in relation to employees under 18*

- (4) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term:
  - (a) permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work; or
  - (b) requires, or has the effect of requiring, an employee to make a payment to an employer or another person;
 if the employee is under 18 and the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

**327 Things given or provided, and amounts required to be spent or paid, in contravention of this Division**

In proceedings for recovery of an amount payable to an employee in relation to the performance of work:

- (a) anything given or provided by the employer contrary to paragraph 323(1)(b) and subsection 323(3) is taken never to have been given or provided to the employee; and
- (b) any amount that the employee has been required to spend or pay contrary to subsection 325(1), or in accordance with a term to which subsection 326(3) applies, is taken to be a deduction, from an amount payable to the employee, made by the employer otherwise than in accordance with section 324.

(Fair Work Act 2009)

## **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:
- (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:
    - (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.
- (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.