



**L**ate-payment, non-payment and underpayment of wages and superannuation can form the basis of a distressing dispute between an employee and employer. If you think your employer is not paying you correctly or if you are being paid late or not at all, there are a number of steps you should take.

**What should I do if my employer is not paying me?**

- Calculate the amounts you believe you should be paid or are entitled to. You will need to familiarise yourself with your contract of employment or enterprise agreement and the relevant industry award. You should also make sure you are eligible for the Superannuation Guarantee which is currently at the rate of 9.5 percent. Normally, if you earn more than \$450.00 per month before tax your employer is required to make statutory super contributions. It doesn't matter whether you are employed on a casual, part-time or full-time basis.
- You need to work out exactly how much you are owed. Your superfund should be able to provide you with a statement confirming what contributions have been made. If you are unsure, you can lodge an enquiry with the ATO. With respect to under-payment, late-payment or non-payment of wages and entitlements, you need to work out the difference between the amounts you have received and the amounts you are entitled to. This can be confusing and time consuming, however a lawyer will be able to assist with the process and advise you as to your correct rates of pay and entitlements including accrued annual leave, penalty rates, overtime and loadings.
- Check that your annual leave and other leave accrual entitlements have been calculated correctly.
- Once you have calculated and tabled the amounts owing, raise the issue with your employer. More often than not, any concerns can be resolved quickly and amicably. If you cannot resolve the issue or are forced to resign due to late or non-payment of wages, you may need to take further action by commencing

proceedings.

**Should I litigate?** Knowing what, where and when to file can be an incredibly stressful and complicated ordeal, especially for someone who is unfamiliar with the mechanics of legal process and the operation of Australian Law. Statutory limitation periods apply for all claims, with some as short as 21 days. Most employees are covered by a federal Award which means their matter can be dealt with in the Fair Work Commission. If you are employed by the state public sector or local government, it is likely that the NSW Industrial Relations Commission will be the appropriate jurisdiction. In some circumstances, it may be necessary to commence proceedings in the Federal or State Courts. Your solicitor will be able to advise you of the appropriate jurisdiction and properly formulate your claim. This can include calculating any interest or compensation you may be entitled to.

**When should I seek legal advice?** If you are unable to resolve your matter directly with your employer, you should contact your union or solicitor as soon as possible if you think you are not being paid what you should be. By meeting with your solicitor early to discuss your options, you will give yourself the best chance to recover any amounts that your employer may owe you.

**How should I prepare to meet with my solicitor?** To assist your solicitor in preparing and presenting your case, you should gather all relevant documents including any contract of employment, all payslips, superfund statements and all relevant correspondence between you and your employer. In some cases, it may be beneficial to prepare a timeline/chronology of key events and a statement containing quotes as to what was said during important conversations. Planning ahead can reduce the time involved for drafting your claim, save legal costs and increase the likelihood of a quick and efficient resolution of your matter.

Talk to us. You'll be inspired!

**Morgan Quaife**  
**Solicitor**

# Thinking employment



## Your goals

All the experience, skill and tenacity needed to get you there.

## Our know-how

### Solicitors

From commercial, insurance and business transactions to family, employment and estate matters.

### Conveyancers

Fast, accurate detailing of all property transactions.

### Mediation

Sensitive dispute negotiation to help you avoid going to court.

### Notary Public

Witnessing and certifying the validity of documents, affidavits and depositions.

### Migration Agent

Negotiating with government on your behalf for family, lifestyle or career reasons.



**LEGALMINDS**  
thinking together

[www.legalminds.com.au](http://www.legalminds.com.au)

T 1300 642 166

E [contactus@legalminds.com.au](mailto:contactus@legalminds.com.au)  
157 Beardy Street Mall, Armidale