Disputes about employee entitlements

Information sheet – 160

This is **Information Sheet 160 (INFO 160)**.

What are disputes about employee entitlements?

Employee entitlements include wages or salary (your pay), annual leave, long service leave, sick leave, redundancy pay, superannuation and other benefits.

Disputes about employee entitlements could relate to:

- unpaid or incorrect wages or salary or your working conditions (e.g. entitlements such as annual leave, long service leave and sick leave)
- failure by your employer to pay superannuation, withhold tax, or issue pay slips.

What you should do

Disputes about unpaid or incorrect wages or salary and working conditions

For disputes about your wages or salary, working conditions (e.g. leave) or workplace rights (e.g. if someone has tried to force you to sign an agreement), contact the Fair Work Ombudsman or call 13 13 94.

Failure to pay superannuation, withhold tax or issue pay slips

For failure by your employer to pay superannuation, withhold tax or issue pay slips, contact the Australian Taxation Office (ATO) or call 13 28 61.

Finding out if the company is in liquidation or another form of external administration

If a company is in liquidation or another form of external administration, you will most likely have been contacted by the external administrator. If so, report your

concerns to the external administrator as they are best placed to investigate them.

To check if a company is in liquidation or another form of external administration, you can search on ASIC Connect or search the insolvency notices.

See also Information Sheet 46 *Liquidation: A guide for employees* (INFO 46) and Information Sheet 75 *Voluntary administration: A guide for employees* (INFO 75).

Employee entitlements if the company is in liquidation or another form of external administration

Employees who are owed certain employee entitlements after losing their job because their employer went into external administration may be able to get financial help from the Australian Government.

This help is available through the Fair Entitlements Guarantee Scheme (FEG).

The FEG is a scheme of last resort, to assist employees who have lost their job because their employer entered liquidation on or after 5 December 2012. For more information visit the FEG website, call the FEG Hotline on 1300 135 040 or email FEG@employment.gov.au.

FEG does not cover unpaid superannuation contributions. To pursue your outstanding superannuation entitlements, you may wish to contact the Australian Taxation Office. For more information about unpaid superannuation contributions, visit the Australian Taxation Office website.

ASIC and employee entitlements

If a company is in liquidation or another form of external administration, external administrators must report to ASIC if they suspect that anyone connected to the company may have committed an offence.

As there are a number of options available to employees and creditors to recover their money (see 'What you should do'), any action we take will generally be aimed at punishing misconduct, rather than recovering individual entitlements.

Generally, we do not act for individuals and will only take action where it will result in a greater impact in the market and benefit the general public more broadly.

However, ASIC has the power to wind up a company on certain grounds related to assisting employees to access the FEG. For more information, see Regulatory Guide 242 *ASIC's power to wind up abandoned companies* (RG 242).

Requests to ASIC to wind up abandoned companies

ASIC can use its discretion to decide whether to wind up an abandoned company and is not required to wind up an abandoned company in every situation.

In considering when to exercise its power to wind up a company, ASIC's primary consideration will be to facilitate employee access to the FEG.

ASIC will then consider how government funds are best utilised to determine whether or not to wind up a company.

ASIC generally will not reinstate a company that has been deregistered in order to wind it up.

Employees of abandoned companies who are owed employee entitlements can submit a request to ASIC to wind up the company, see 'Employment: wages and conditions' on our complaints about companies, organisations or people page.

Where can I get more information?

- More information about ASIC's role and the laws we administer.
- INFO 46 *Liquidation: A guide for employees*.
- INFO 75 *Voluntary administration: A guide for employees*.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

> Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.
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> This information sheet was reissued in September 2017.