

A collage of various Australian currency notes, including 100, 50, and 20 dollar bills, with a dark blue rectangular box overlaid in the center containing the title text.

## Civil and Criminal Penalties

### AN INDEPTH LOOK AT NAVIGATING THE NEW CIVIL AND CRIMINAL PENALTIES FOR UNDERPAYMENT

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From 1 January 2025, intentionally underpaying an employee's wages or entitlements will be a criminal offence under the *Fair Work Act 2009* (Cth). These changes, along with penalty increases for both criminal and civil breaches are designed to promote fairness and compliance in workplaces.

These legislative changes affect all employers, but are particularly critical for small businesses and farms, where payroll, record keeping, and award compliance are often handled without dedicated HR teams. If you employ staff, it's time to review your payroll, contracts, and workplace systems to avoid costly non-compliance issues.

#### **Criminal Offence for Intentional Underpayment**

Since 1 January 2025, knowingly and intentionally underpaying an employee's entitlements can be prosecuted as a criminal offence. This includes failing to pay:

- Award minimum hourly rates
- Penalty rates (e.g. weekends, public holidays)
- Overtime
- Allowances
- Leave entitlements
- Redundancy pay
- Superannuation

Honest mistakes are not criminal offences, but employers must act promptly once they become aware of an underpayment.

## Criminal Penalties

Individuals (e.g. owners, directors, managers):

- Up to 10 years imprisonment
- Fines up to \$1.65 million, or three times the underpayment, whichever is greater

Companies:

- Fines up to \$8.25 million, or three times the underpayment, whichever is greater.

## Increased Civil Penalties for All Employers

If the failure is due to error, lack of knowledge, or accidental, it will not be criminal, but it may still be a civil breach or serious civil contravention.

The civil penalties for failing to pay employee entitlements have also been significantly increased, and came into effect 1 January 2025:

	An Individual*	Less than 15 employees	15 or more employees
Per contravention	\$19,800	\$99,000	\$495,000
Per serious contravention	\$198,000	\$990,000	\$4,950,000

Note: An individual refers to a person involved in the company can include a: director, manager, accountant, or business involved in the supply chain.

## What is a "Serious Contravention"?

A contravention is classified as serious if the employer:

- Knew they were breaching workplace laws; or
- was reckless as to whether they were breaching the law

Serious contraventions attract the highest penalties and apply to breaches of key areas, including:

- The National Employment Standards
- Modern awards and enterprise agreements
- Minimum wage orders
- Rules about payslips, record-keeping, wage payments, and unlawful deductions

## No Records, No Defence

Employers who fail to meet record-keeping or payslip obligations must disprove the employee's claim if taken to court.

Any wage claim may be accepted unless you can prove otherwise if you haven't:

- Kept timesheets, pay records, or leave records
- Issued compliant payslips
- Maintained visa/work entitlement evidence for non-citizens

### ProcessWorx Recommends You:

1. Review Employment Arrangements
  - Confirm employee classifications (casual, part-time, full-time)
  - Check pay rates against the relevant award
  - Ensure you're complying with NES entitlements
2. Audit Payroll and Records
  - Review timesheets, payslips, superannuation, and leave balances
  - Fix any underpayments promptly and transparently
  - Keep accurate records
3. Update Employment Documents
  - Ensure all workers have up-to-date contracts
  - Include correct award coverage, classification, pay, hours, and entitlements
4. Train Staff
  - Ensure anyone responsible for hiring, rostering or payroll understands their legal obligations and the risks of non-compliance
5. Use ProcessWorxShield
  - Our tailored HR and WHS support platform helps you manage compliance, store documents, and access current advice, without the overhead of a full-time HR team.
6. Get Help Early
  - If you're unsure about your obligations, don't wait for a Fair Work audit or employee complaint.

The new laws may feel overwhelming, but the steps to mitigate risks are simple: stay informed, act early, and get the right support. If you'd like help navigating these changes, reviewing your current employment practices or implementing better payroll systems, contact Processworx on 08 9316 9896 or [enquiries@processworx.com.au](mailto:enquiries@processworx.com.au).



# ProcessWorx

### How ProcessWorx can help your business:

With over 10 years of experience working with small businesses, ProcessWorx knows the importance of understanding and protecting your business from ongoing changes to the Industrial Relations landscape, while ensuring you remain compliant.

If you need assistance implementing any changes in your business or would like a review of your current workforce planning and contracts, please contact ProcessWorx and they can assist you with your IR compliance.

If you would like more information about Industrial Relations for your business, please contact ProcessWorx on **(08) 9316 9896** or email **[enquiries@processworx.com.au](mailto:enquiries@processworx.com.au)**