

MEMBERS UPDATE



**MAY
2021**



In this month's members update we look at:

- Reminder of Casual Employment changes
- Superannuation Guarantee Increase FAQs
- Super Stapling
- JobKeeper Overpayments
- FAQ: Can I deduct Notice from Leave paid out on termination?

Welcome to the May 2021 member's update

The end of the financial year is fast approaching and we have been receiving an increasing number of queries regarding the legislated superannuation guarantee increase, with the frequently asked questions answered for you below.

Also, don't forget that employers have new obligations for their casual employees' effective 27 March 2021 and should be considering these impacts now.

Finally, we thought we'd seen the end of JobKeeper, however the ATO has released new information regarding their process if they identify an overpayment of JobKeeper payments.



All new casual employees employed after the 27th of March 2021 should receive the Casual Employment Information Statement (CEIS), and small business employers (less than 15 employees) should provide all casuals employed at as 27 March 2021 with the CEIS immediately

Non-small business employers are required to provide existing casual employees (employed before 27 March 2021) with the CEIS as soon as possible after the 27th of September 2021.

You can find a copy of the CEIS here <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/casual-employment-information-statement>

Further to the legislative changes for casuals, the Fair Work Commission is currently reviewing Modern Awards to determine if any changes need to be made within the awards. The Fair Work Commission will be considering:

- Whether the awards need to change in the way they define casuals
- Whether award model casual conversion clauses need to be amended
- Whether there are implications of any award variations for existing employment arrangements

The Fair Work Commission has committed to completing this review by 27 September 2021.

Superannuation Guarantee Increase 1 July 2021

The superannuation guarantee increase from 9.5% to 10% is currently legislated to come into effect on 1 July 2021.

FAQs

1. Will the increase go ahead as planned?

At this stage the increase is legislated. In order to remove or delay the increase the government will

need to introduce new legislation to parliament and this will need to pass through both houses.

2. How will the increase impact employees on salary packages that are inclusive of super?

Employees with a remuneration package will need to be reviewed and you may need to seek legal advice as to your contractual obligations for these employees. This could mean a pay decrease for some employees if their contracts allow. For example, an employee earning a \$110,000 salary package with the current 9.5% superannuation contribution, would currently receive a before tax total of \$100,456.62, however, with the superannuation guarantee rate increasing to 10%, the before-tax pay may decrease to \$100,000.

3. What happens if part of the pay period falls in June but the pay date is in July?

All payments made from 1 July onwards will have the 10% superannuation rate applied, even if part or all of the pay period falls in June. Superannuation obligations are always determined based on the pay date.

What to do next:

- Make sure that your payroll software provider is able to amend the Super percentage for the appropriate payrun.
- Review and update any employee contracts that have a Superannuation Guarantee of less than 10%
- Check the wording in your employee contracts for employees with remuneration packages
- Have discussions with employees – particularly if the changes are likely to impact their take home pay.

Australian Payroll Association will monitor whether the upcoming Budget affects the legislated increase and will keep you updated in upcoming Members Updates if anything changes.

Super Stapling

Super stapling rules are proposed to become effective on 1st of July 2021. Currently, if a new employee does not choose or nominate a superannuation fund an employer makes contribution on behalf of the employee into the employers chosen default super. As a result, many employees have multiple super funds. In the last federal budget the government flagged its intention to address this by proposing the new rules for Stapling Super to be introduced from the 1st of July 2021. The legislation has not yet passed through parliament, but if these rules are passed there will be a new process for employers to check if a new employee has chosen a superannuation fund and if not, the employer will need to determine what fund the employees' stapled fund is.

A stapled fund is the last superannuation fund that contributions were made to on the employees' behalf or if they have several funds, the fund that has the largest account balance.

Australian Payroll Association will monitor the progress of the Super Stapling legislation and will update you in upcoming Members Updates once further information is available.

JobKeeper Overpayments

JobKeeper may be over, however the ATO is still reviewing employer and employee eligibility for the scheme to ensure that all payments were made to eligible participants. The ATO has recently released updated information regarding how they will treat JobKeeper overpayments that they have identified. Further information is available in the link below:

<https://www.ato.gov.au/General/JobKeeper-Payment/Keeping-JobKeeper-payment-fair/JobKeeper-overpayments/>

FAQ: Can I deduct Notice from Leave paid out on termination?

Sometimes we have employees that resign without giving notice. Fair Work states;

Most awards say that an employer can deduct up to one week's wages from an employee's pay if:

- the employee is over 18
- the employee hasn't given the right amount of notice under their award
- the deduction isn't unreasonable.

However, employers can only deduct from wages owed under the award. They can't deduct from other entitlements owed to the employee, such as accumulated leave or other over award payments.

As a result, if you have an employee that has not given notice and they have no wages to deduct from, you cannot deduct it from Annual Leave paid out on termination.



Please join us for our May members webinar where we will be looking at **Superannuation and the upcoming increases in the SG rate, the maximum contribution base and the concessional contribution cap**. Join us on **Tuesday 18th May 2021 at 1pm.**

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