

Workplace incidents and inspections

Workplace incidents

What is a workplace incident, who to notify of an incident

Workplace inspections

What are workplace inspections, role of inspectors, role of industrial officers, infringement notices

Workplace incidents

What is a workplace incident

The Queensland Department of Industrial Relations (DIR) administers the *Industrial Relations Act 1999* (state legislation) and other legislation dealing with employer/employee relationships

According to the *Industrial Relations Act 1999* a workplace incident is any incident dealing with employer or employee relationships which can include:

- unfair dismissal
- being paid the incorrect wages
- incorrect leave entitlements
- unfair work conditions

Please be aware that you must:

Notify **Workplace Health and Safety Queensland** of any incident that impacts upon the **health and safety of a person** in the workplace including harassment (psychosocial injury).

Notify **Electrical Safety Office** of any incident that involves a person being killed or injured or property from being destroyed or damaged by **electricity**.

Who to notify to resolve an incident

If you have been in an incident (unfair dismissal, paid incorrect wages, incorrect leave entitlements, working in unfair work conditions) there are four steps you should follow to notify and resolve an incident:

Step 1 - Self-resolution

Step 2 - Complete a wages and conditions claim form (if Department of Industrial Relations is the chosen option)

Step 3 - The investigation process

Step 4 - Formal investigation

Step 1 - Self-resolution

If an employee has evidence of an underpayment and/or non-payment of wages, entitlements or conditions, under State or Federal industrial law, they are entitled to:

- file a notice of dispute with the Queensland Industrial Relations Commission (QIRC) (existing employees only), or
- commence an application on their own behalf, e.g. QIRC or Industrial Magistrates Court, or

- commence a self recovery action through the Minor Debts Court, or
- authorise a person to legally represent them e.g. solicitor, or
- contact their union (if they belong to one), or
- lodge a claim at a Queensland Department of Industrial Relations office, or
- telephone Wageline for information to assist them when raising issues with their employer and/or request a claim form

The Department of Industrial Relations (DIR) has developed a Self Recovery Kit including Form 3 for Minor Debt Claims for employees to recover unpaid wages and entitlements through the Minor Debts Court for claims less than \$7,500.

Employees may wish to take advantage of this kit as a quicker and more convenient alternative to recovering unpaid wages than lodging a wage and conditions claim with the Department of Industrial Relations.

For more details on Civil Court procedures or general instructions for completing, refer to the practice and procedure section of the Queensland Courts.

Employees who are in doubt about whether to use the minor debts procedure, after reading this kit, should contact their own legal advisor, their local courthouse or Department of Industrial Relations on 1300 369 945.

If you need to determine your entitlements under an award or agreement or the *Industrial Relations Act 1999*, or prefer to lodge a wage and conditions claim with DIR, contact Wageline's information centre on 1300 369 945.

Step 2 - Complete a wages and conditions claim form (if DIR is the chosen option)

Before an inspector will investigate a claim an employee will need to provide some basic information about their employment by completing a **wage and conditions claim form**. The form can be obtained by contacting the Department's Wageline information centre on 1300 369 945.

The wage and conditions claim form is to be completed and signed by an employee, previous or current, who believes there may be wages, conditions or other entitlements owed to them as a result of their employment with an employer.

If you are a member of a union and the union is looking into this matter on your behalf **or** if you are taking any other action, legal or otherwise, to recover the amounts you claim to be outstanding, please be aware that the Inspectors will **not** investigate a matter whilst it is already being investigated by another body.

If the union or other body (e.g., solicitor) has ended its investigation but could **not** assist you, continue to complete this form and attach a separate sheet of paper stating the reason given by the union or other body.

Details required before an investigation will commence include, for example:

- your employee details, including name, date of birth, address and contact details
- your employer's details, including business name, address, contact details etc.
- details about your job e.g. employment history, position held, employment status (e.g. full time, part time, casual etc), and any relevant qualifications.
- pay details
- termination details (if applicable)
- specific details about your claim, for example:
 - wages - underpayment and/or non-payment
 - overtime - underpayment and/or non-payment
 - annual leave - underpayment and/or non-payment
 - other matters (e.g. long service leave, allowances, unauthorised deductions, sick leave, breaks, public holidays, notice of termination, redundancy payments)
- have you raised your issues with your employer and what was the response

Step 3 - The investigation process

Your wage and conditions claim form will be forwarded to you from the Department of Industrial Relations. You are advised to return the form to the regional office nearest to where your job was/is located. A senior officer of this Department will review your allegations.

If considered appropriate, your employer or former employer will be contacted by telephone or letter and urged to resolve the matter without the necessity for a formal investigation.

Normally, the matter will remain in the resolution process for approximately 28 days. This period may be extended if positive discussions/negotiations occur. It will not be necessary for you to contact the Department during this period. However, you may be contacted as part of the process and in response to any issues raised by the employer.

Following this resolution process a more detailed investigation of unresolved matters may occur or you may be advised of other options.

Step 4 - Formal investigation

If the above methods are not successful or not appropriate to your claim the matter may be referred to an inspector within the appropriate region for formal investigation and you will be advised of the outcome in due course.

Inspections

What are workplace inspections?

What is a workplace inspection according to the *Industrial Relations Act 1999*

Role of inspectors

Responsibilities and powers of inspectors

Role of industrial officers

Responsibilities and powers of industrial officers

Issuing of infringement notices

What are infringement notices, how are they issued, when are they issued

What are workplace inspections

Industrial inspectors are empowered to interview employers and employees regarding any matter or incident relating to compliance with the *Industrial Relations Act 1999*.

An inspector may also inspect (otherwise known as investigations) the time and wages records of all employees of an employer to ensure compliance with the Act.

An inspector may:

- make a formal claim on an employer for the payment of arrears of wages that may be due to an employee
- issue an infringement notice in relation to a breach of the Act or
- recommend that prosecution action be taken against an employer

Generally, comprehensive investigations should be completed within six months with less serious or complicated complaints being dealt with more quickly.

Further information on compliance of workplace inspections is available from the department's Wageline site.

Role of inspectors

Inspectors are officers employed by the Department of Industrial Relations who have a responsibility to:

- ensure (as far as possible) the provisions of awards and agreements are complied with
- inform employees and employers of their rights and obligations under the Act

- perform other functions given to an inspector under the *Industrial Relations Act 1999* and or other related legislation

An inspector may:

- enter any public place or workplace when it is carrying on business or otherwise open for entry
- inspect, photograph or film any part of the place or anything at the workplace
- copy any document at the workplace (including but not limited to time and wages records)
- require a person at the workplace to give reasonable help to exercise these powers
- require a person to produce for inspection, at a reasonable time and place nominated by the Inspector, a document relating to employees and keep the document to copy it before returning it as soon as practicable
- during business hours, question an employer or other person at the workplace to obtain information to help the inspector ensure compliance with the Act or an industrial instrument
- for the purposes under the Act, require a person to state their name and address
- issue an infringement notice relating to contraventions of specific sections of the *Industrial Relations Act 1999*

Role of industrial officers

Authorised industrial officers are officers or employees of an industrial organisation (e.g. a union) who are authorised by the industrial registrar to exercise certain powers.

They may enter a workplace when called upon, during the employer's business hours.

The officer may inspect time and wages records of members of their organisation, employees who are eligible to be members and former employees. The time and wages records of an employee covered by a Queensland workplace agreement can only be inspected if the employee gives their written permission. Other employees may make a written request to their employer that their time and wages record are not to be made available for inspection.

On entering a workplace the officer must make his/her identity known to the person in charge of the workplace and produce their authority.

The officer may discuss matters under the Act with the employer and employees in work or non-work time. Matters not under the Act may be discussed in non-work time.

Infringement notices

The issuing of infringement notices and prosecution action assists in the prevention of committing industrial relations offences.

What is an infringement notice?

One of the actions available to inspectors to encourage compliance with the Act is through the issuing of an infringement notice. Infringement notice (sometimes called an "on-the-spot fine") may be issued for certain offences against the *Industrial Relations Act 1999* and prescribes a penalty to be paid by an alleged offender in respect of these offences.

When an inspector issues an infringement notice, it has an immediate punitive effect. Infringement notices are appropriate for use when the impact of the offence on employees is high, or the offence adversely affects the inspector's ability to recover wages to which an employee may be entitled.

More serious offences involving wilful or repetitive behaviour, involving large sums of money or committed over a prolonged period of employment may also warrant the issuing of an infringement notice.

A person issued with an infringement notice may elect to have the matter heard in the Industrial Magistrates Court.

Procedure for issuing infringement notices

When an inspector identifies a breach in relation to an industrial relations offence it is at the inspector's discretion as to the course of action to be taken having regard to the type of complaint.

The inspector has the option of either -

- issuing a warning (verbal or written) to rectify the situation **or**
- issuing an infringement notice for the offence

In most instances it may be appropriate to issue a warning to the employer prior to the issuing of the infringement notice. This gives the employer an opportunity to remedy any non-compliance.

When a warning is to be issued an inspector will interview the employer, record the details of their conversation in their notebook and advise the employer that a follow up inspection will be conducted in "x" weeks time to ensure that the non-compliance has been rectified.

A warning would not be appropriate where the employer's actions are considered wilful or repetitive or has jeopardized an inspector or employee's ability to recover entitlements to which they may be due. An employer's history of compliance with industrial relations laws may also be relevant in determining if a warning is appropriate.

An infringement notice may be issued to an employer at the time of inspection ("on the spot") or may be issued at a later date after consideration of the evidence of any alleged offence. A separate infringement notice must be issued for each different offence.

Section offences for issue of infringement notices

Inspectors appointed under the Act are authorised to issue Infringement Notices to alleged offenders. An infringement notice (sometimes called an "on-the spot fine") may be issued for certain offences against sections s138(4), s358(1), s366(1),(2),(4)&(5), s367(1),(2),(3)&(4), s370(1)&(3), s406(1), s666(1), s697(2) and s700(1) of the *Industrial Relations Act 1999*.

Refer to the schedule of offences and penalties that relate to infringement notices.