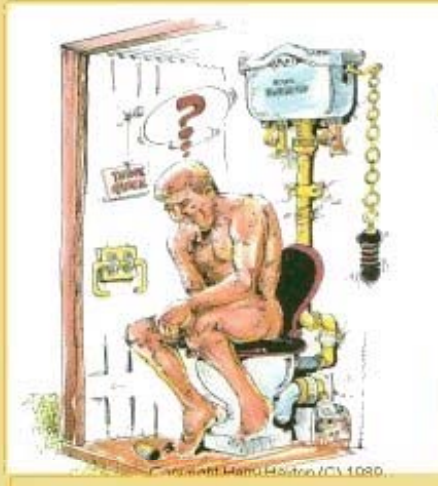


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Volume 7 Number 5

Published Periodically

June 2006

WORK CHOICES – YOUR RECORD KEEPING REQUIREMENTS

THIS ARTICLE HAS BEEN PREPARED IN GOOD FAITH AND REPRESENTS THE AUTHORS OPINION ONLY.

SIX YEARS NOW SEVEN

The new legislation has changed the outlook on employment and management of employees. Thankfully it is a bit more specific than any previous legislation in giving some prescriptive retention periods for records as well as some prescriptive content of records.

The previous Industrial Relations Regulations required an employer to keep payroll records for a period of six years (why six no one knows), to be able to provide a proof of payment to an employee, for the purposes of recovering wages (note this is carried over to this new act as seen in para 179 below). The new legislation or more to the point the new regulations give us three very prescriptive requirements.

The key period is now seven years; the question is when do we measure from?. If the measure is from termination, a records will be kept for the period of employment (perhaps 20 years) PLUS another 7 years.

To make it easier to understand

Those records whose retention period is counted from the DATE OF TERMINATION of the employee are show in GREEN in Times Roman font in case you only have it in black and white.

Those whose retention period is based on FINANCIAL YEARS are shown in blue Arial font.

Penalties apply to all sections, which I have not repeated but Civil Remedy applies to them all. Obligations to make and keep records relating to employees are spelt out quite specifically in the new regulations and were not done so in the previous incarnation.

The act refers to Australian Workplace Agreements in particular.

179 Recovery of wages etc.

If an employer is required by an applicable provision (except a term of an AWA) to pay an amount to an employee or to pay an amount to a superannuation fund on behalf of an employee, the employee, or an inspector on behalf of the employee, may, not later than 6 years after the employer was required to make the payment to the employee or fund, sue for the amount of the payment in an eligible court.

This was in the old Industrial Relations Act, and meant that payroll records were to be kept for six years, but this has now been changed to seven years as you see below. The regulations get far more specific.

8.14 Retention of signed workplace agreement

(1) For paragraph 418 (f) of the Act, an employer must retain a signed copy of a workplace agreement for:

(a) the duration of the workplace agreement; and

(b) the period of 7 years after the workplace agreement is terminated.

(2) Regulation 19.20 applies to a signed workplace agreement as if a reference in that regulation to a record were a reference to a signed workplace agreement.

Division 2 Rules concerning keeping records

19.4 Obligation to make and keep records relating to employees

(1) An employer who employs an employee must make, or cause to be made, a record in accordance with Divisions 3 and 4 in relation to the employee.

(2) Subject to regulation 19.17, an employer must keep, or cause to be kept, an entry in a record:

(a) in the case of a matter of a kind mentioned in regulation 19.8 or paragraph 19.15 (1) (e) — for a **continuous period of 7 years after the date on which:**

(i) the entry is changed; or

(ii) the employee's employment with the employer is terminated; whichever happens first; or
 (b) in any other case —

For a continuous period of 7 years after the date on which the entry is made.

19.8 Contents of records — general

(1) The record relating to the employee must contain the following:

- (a) the name of the employer;
- (b) the name of the employee;
- (c) the date of birth of the employee as provided by the employee;
- (d) the name of each instrument under which the employee derives entitlements of employment;
- (e) the classification of the employee under each such instrument;
- (f) whether the employee's employment is:
 - (i) full-time; or
 - (ii) part-time;
- (g) if the employee is full-time or part-time — a specification of the number of hours to be worked by the employee per week;
- (h) whether the employee's employment is:
 - (i) permanent; or
 - (ii) temporary; or
 - (iii) casual;
- (i) the date on which the employee's employment began.

19.9 Contents of records - hours worked

(1) The record relating to the employee must contain the following:

- (a) the employee's daily starting and finishing times;
- (b) the total number of hours worked by the employee during each day;
- (c) the employee's nominal hours and any variations to those hours.

19.10 Contents of records — reasonable additional hours

(1) If the employer and employee agree in writing to an averaging of the employee's hours of work under section 226 of the Act, the employer must keep a copy of that agreement.

19.11 Contents of records — pay

(1) The record relating to the employee must contain the following:

- (a) the basis on which the employee's rate of pay is determined;
- (b) the gross rate of pay expressed as an hourly rate;
- (c) details of any incentive-based payment, bonus, loading monetary allowance, penalty rate or other separately identifiable entitlement that the employee is entitled to;
- (d) the period to which the payment relates;
- (e) the total remuneration received by the employee during that period, including the gross and net amounts;
- (f) the dates on which the employee was paid;

(g) the deductions (if any) made from that remuneration and the name of the fund or account into which the deductions were paid.

19.12 Contents of records — annual leave

(1) The employee's record must contain the following matters relating to annual leave:

- (a) the rate of the employee's accrual of annual leave;
- (b) the date on which the employee was credited with annual leave;
- (c) the balance of the employee's entitlement to that annual leave from time to time;
- (d) the amount of annual leave taken by the employee;
- (e) the amount paid to the employee while on annual leave.

(2) If the employee has elected to forgo an entitlement to take an amount of annual leave, an employer must keep the following:

- (a) a copy of the employee's written election to forgo an amount of annual leave;
 - (b) a record of the rate of payment for the amount of annual leave forgone and when the payment was made.
- (3) If the employee is a shift worker, the employer must keep a record of the following:
- (a) the periods the employee was a shift worker;
 - (b) the date on which the employee was credited with additional annual leave.

19.13 Contents of records — personal leave

(1) The employee's record must contain the following matters relating to personal leave:

- (a) the rate of the employee's accrual of personal leave;
- (b) the date on which the employee was credited with personal leave;
- (c) the balance of the employee's entitlement to personal leave from time to time;
- (d) the amount and type of personal leave taken by the employee;
- (e) the amount paid to the employee while on personal leave.



19.14 Contents of records — other leave

(1) If the employee is entitled to leave other than annual or personal leave the employee's record must contain the following:

- (a) the amount and type of leave taken by the employee (including whether the leave is paid or unpaid);
- (b) details of the accrual of that leave;
- (c) the date on which the employee was credited with that leave;
- (d) the balance of the employee's entitlement to that leave from time to time;
- (e) the amount paid to the employee while on that leave.

19.15 Contents of records — superannuation contributions

(1) If the employer is required to make superannuation contributions for the benefit of the employee, the record relating to the employee must contain the following:

- (a) the amount of the contributions made;
- (b) the period over which the contributions were made;
- (c) the dates on which the contributions were made;
- (d) the name of any fund to which the contributions were made;
- (e) the basis on which the employer became liable to make the contributions, including:
 - (i) the keeping of a record of any election made by the employee as to the fund to which contributions are to be made; and
 - (ii) the date of any relevant election.

19.16 Contents of records — termination of employment

If the employee's employment is terminated, the record relating to the employee must contain the following:

- (a) whether the employment was terminated:
 - (i) by consent; or
 - (ii) by notice; or
 - (iii) summarily; or
 - (iv) in some other manner, specifying the manner;
- (b) the name of the person who acted to terminate the employment.

19.20 Inspection and copying of a record

(1) An employer must make a copy of a record available, in accordance with sub regulations (2) and (3), on request by:

- (a) the employee, or the former employee, to whom the record relates; or
- (b) a workplace inspector.

Note Divisions 4 and 5 of Part 15 of the Act deal with a registered organisation's right to inspect records in relation to employment.

(2) The employer must make the copy available in a legible form in the English language to the person making the request for inspection and copying.

(3) The employer must make the copy available:

- (a) if the request is from an employee or former employee and the record is kept at the premises

where the employee works or worked — within 3 business days at those premises or by posting a copy of the record to the employee or former employee within 14 days of receiving the request; or

(b) if the request is from a workplace inspector — within 3 business days at the employer's business premises or by posting or faxing a copy of the record to the workplace inspector within 14 days of receiving the request.

19.22 Pay slips — subsection 836 (2) of the Act

(1) An employer who employs an employee must issue to the employee a written pay slip relating to each payment by the employer of an amount to the employee as remuneration.

(2) The pay slip must be issued within 1 day of the payment to which the pay slip relates being made to the employee.

(3) The employer must include on a pay slip particulars specified in regulation 19.23.



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19.23 Contents of pay slips

(1) For the purposes of sub regulation 19.22 (3), the following particulars are specified:

- (a) the name of the employer;
- (b) the name of the employee;
- (c) the classification of the employee under each instrument under which the employee derives entitlements of employment;
- (d) the date on which the payment to which the pay slip relates was made;
- (e) the period to which that pay slip relates;
- (f) if the employee is paid at an hourly rate of pay:
 - (i) the ordinary hourly rate; and
 - (ii) the number of hours in that period for which the employee was employed at that rate; and
 - (iii) the amount of the payment made at that rate;
- (g) if the employee is not paid at an hourly rate of pay — that rate as at the latest date to which the payment relates expressed as an hourly rate;
- (h) the gross amount of the payment;
- (i) the net amount of the payment;
- (j) any amount paid that is an incentive-based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlement the employee has;
- (k) the details in respect of each amount deducted from the gross amount of the payment including the name, or the name and number, of the fund or account into which the deduction was paid;

(l) if the employer is required to make superannuation contributions for the benefit of the employee:

(i) the amount of each contribution made for the benefit of the employee during the period to which the pay slip relates; and

(ii) the name of any fund to which that contribution was made.

Penalties are specified in the regulations and most of the regulations are a civil remedy provision.

The full text is available from

<https://www.workchoices.gov.au/ourplan/legislation>

Quote of the week

“Knowledge and Information management is a FORCE MULTIPLIER.”

Mark Chapman, 2006

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Harry Haxton

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