

The 20 Critical Questions Series

What Directors should ask about Wage Theft

Updated 2022

Wage theft – Underpayment or non-payment of wages, allowances, entitlements or superannuation to a worker by an employer that deny workers their legal entitlements.

Governance Foundations

1. Does the organisation have defined values, rules of behaviour and a code of conduct that have been communicated to management and the internal (in-house employees) and external (labour hire, contractors, consultants, etc) workforce? Are these periodically reinforced? Does it also apply to suppliers?
2. Does the organisation have a defined governance framework that includes workforce, human resources and payroll?
3. Is there an approved and registered certified collective agreement in place covering the workforce that was negotiated between the organisation and its employees? If not, is there a relevant industrial award or awards? Have these been communicated to the workforce and are available on the organisation intranet?
4. Does the organisation conform with the Fair Work Ombudsman's '11 minimum national employment standards' (also called '11 minimum entitlements')?
5. Are there transparent pay and entitlement rates across the organisation for award-based employees that are known to employees? For award-based employees and those on individual contracts, is the hourly rate of pay equivalent or higher than the legal minimum hourly rate, but not lower?
6. Are there organisation rules about who can be employed, for example, international students, backpackers, and the like? If international students or backpackers are employed, are they provided with hard copy or electronic information on their rights and entitlements including length of pay period, when they can expect to be paid (weekly, fortnightly, monthly), and protection of their Tax File Numbers (TFNs)?
7. Are there reasonable grievance and whistleblower processes in place? Are these periodically communicated to the workforce including channels for complaints about human resource and payroll issues such as pay, entitlements or superannuation?
8. Where legislated or voluntarily applied, are modern slavery risks in operational areas or the supply chain understood, managed or mitigated, and appropriately reported.

Employee Engagement

9. Are employees recruited through an approved process featuring such things as consistent job design, pre-determined remuneration ranges and selection criteria, advertised vacancies and merit selection? Does every member of the internal and external workforce have a Tax File Number (TFN)?
10. Is there an on-boarding and induction process where new employees are educated in their pay, allowances, entitlements and other organisational policies? Are all employees provided with a hard copy or electronic version of their (a) appointment letter and employment contract, (b) registered certified collective agreement (c) relevant industrial award?
11. Is each member of the workforce provided each pay period with an itemised hard copy or electronic pay advice consistent with information supplied to the Australian Tax Office (ATO), showing such things as (a) name (b) job (c) job classification (d) pay rate (e) hours worked (f) allowances paid (g) superannuation paid (h) tax paid (i) who to consult if they believe an error has occurred?

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12. Is there a process explained to employees about how to seek guidance when they believe they are incorrectly paid their pay or entitlements? Are they similarly informed of grievance, complaints, and whistleblower arrangements as per question 7? If dissatisfied with a response, is there a defined escalation process communicated to employees?
13. Is there a process to educate employees about their superannuation entitlements and how to check they actually receive their correct entitlements at the correct time?

Assurance Foundations

14. Does the organisation have a defined assurance framework built around the '3 Lines Model' that includes controls over human resources and payroll?
15. Are human resources and payroll regularly audited? Does the organisation use 'mystery shoppers' to speak with the workforce to ascertain they are being treated fairly and paid correctly? Are results of audits and other assurance activities reported to senior management and the audit committee? Are payments promptly made to employees where underpayments are detected?
16. Have labour hire companies that supply workers been thoroughly vetted to ascertain whether they have received adverse media scrutiny, complaints, human rights abuse allegations or convictions? Are labour hire companies checked through third-party audits (not just self-declaration) to assure correctness and integrity of their operations including that appropriate pay, entitlements and superannuation are correctly paid at the correct time?
17. Are employee termination payments independently reviewed for correctness before payment?
18. Does management take responsive and timely action to implement remedial actions where identified that are applicable to pay, entitlements and superannuation? Is this complemented by robust root cause analysis to ascertain the real reasons non-compliance and errors occurred?
19. Does the audit committee have sufficient visibility of all workforce, human resources and payroll assurance activities across all 3 Lines including reports on their effectiveness?
20. Is meaningful assurance provided to management and the audit committee to demonstrate the organisation has effective controls over its workforce risks, in particular, fraud and corruption risks relating to workforce, human resources and payroll?

The Big Question

How does the organisation clearly know it is doing the right thing by all its internal and external workforce, and correctly paying them correct entitlements at the correct time?