



Changes to state employment laws in WA

New compliance tools

June 2022

New compliance and enforcement provisions have been introduced for the state industrial relations system. These include increased penalties for employers who do not meet their employment obligations under state industrial instruments, and enhanced powers and new compliance tools for industrial inspectors.

Industrial inspectors in the Private Sector Labour Relations division of the Department of Mines, Industry Regulation and Safety (DMIRS) have a statutory role to ensure compliance with Western Australia's employment laws.

These new provisions were introduced by the *Industrial Relations Legislation Amendment Act 2021* and commenced on 20 June 2022.

This fact sheet provides details on the new provisions of the *Industrial Relations Act 1979* (IR Act) which enable inspectors to:

- issue infringement notices to employers for failing to comply with record keeping or pay slip requirements, or failing to produce a record as required;
- enter into an enforceable undertaking with an employer to voluntarily rectify identified breaches; and
- issue a compliance notice to an employer requiring them to rectify identified breaches.

This fact sheet talks about entitlement provisions. The term “entitlement provision” means:

- a provision of a WA award, industrial agreement, employer-employee agreement and certain orders of the Western Australian Industrial Relations Commission (WAIRC);
- a provision of the *Long Service Leave Act 1958* (LSL Act) which gives an entitlement to long service leave; and
- a minimum condition of employment under the *Minimum Conditions of Employment Act 1993*.

State employment laws have changed

This fact sheet is part of a suite of information on the changes to state employment laws that commenced on 20 June 2022. For details on the changes visit www.dmirs.wa.gov.au/new-employment-laws.

Civil infringement notices

The new compliance and enforcement provisions in the IR Act enable an industrial inspector to give a person a civil infringement notice, similar to an 'on-the-spot fine', for a contravention of a record-related civil penalty provision.

An inspector is able to issue a civil infringement notice if the inspector reasonably believes that an employer (or another person) has committed one or more contraventions of a **record-related civil penalty provision**. This means a provision that requires:

- a record to be kept under the IR Act or LSL Act;
- a pay slip to be given to an employee under the pay slip provisions in the IR Act; or
- a person to produce a record for inspection.

A civil infringement notice must be given within 12 months after the day the alleged contravention occurred.

A civil infringement notice may be given to a **person** rather than just an employer. This is because a person other than an employer can contravene a record-related civil penalty provision, such as a person who has access to a record and is required by an industrial inspector to produce the record for inspection.

A civil infringement notice must contain a range of specific information, including the recipient's name and address and brief details of the alleged contravention or contraventions, and must specify the civil infringement notice penalty. A civil infringement notice penalty must not exceed \$6,500 for a body corporate and \$1,300 for an individual.

A civil infringement notice penalty must be paid within 28 days, except if the recipient applies to the nominated person for more time to pay the penalty, or to withdraw the notice, in which case different timeframes will apply.

The recipient of an infringement notice may apply to DMIRS to have the notice withdrawn. This provides for a review process. However, if the recipient's application to have the notice withdrawn is refused, the recipient can either pay the civil infringement notice penalty or potentially face enforcement proceedings in the Industrial Magistrates Court for contravention of the record-related civil penalty provision.

Enforceable undertakings

The new provisions enable an industrial inspector to accept a written enforceable undertaking from a person in relation to a contravention of a civil penalty provision or an entitlement provision. As it is possible for a contravention to be committed by a person other than an employer, these provisions apply broadly to 'persons'.

An employer who enters into an enforceable undertaking agrees to do certain things, such as back pay employees who have been underpaid within a certain period of time. Enforceable undertakings can also require employers to do other things, such as engaging an auditor and providing periodic compliance audits to the regulator.

An industrial inspector may accept an enforceable undertaking if the inspector reasonably believes that a person has committed a contravention of a civil penalty provision or an entitlement provision. In some circumstances, it may be appropriate for an industrial inspector to accept an enforceable undertaking from a person as an alternative to taking enforcement proceedings.

Any enforceable undertaking accepted will be published on the DMIRS website.

Compliance notices

Under the new provisions, if an industrial inspector reasonably believes that a person has contravened an entitlement provision (such as an employer failing to pay minimum wages) the inspector may issue a compliance notice requiring the employer to rectify the contraventions within a reasonable period. As it is possible for a contravention to be committed by a person other than an employer, these provisions apply broadly to 'persons'.

A compliance notice may require a person to take certain action to remedy the direct effects of the contravention, and to produce reasonable evidence of compliance with the notice, within a reasonable time specified in the notice. As an example, a compliance notice could require an employer to remedy the underpayments to employees by a specified date.

A compliance notice must set out a range of information including brief details of the contravention and an explanation that a failure to comply with the notice may contravene a civil penalty provision.

When a compliance notice is issued to a person, the onus is on the person to either comply with it, or seek to have it reviewed. Not complying with a compliance notice is a civil penalty provision, and the maximum penalty in this instance is \$30,000 for a body corporate and \$6,000 for an individual.

A person who has been given a compliance notice may apply to the Industrial Magistrates Court for a review of the notice on the following grounds:

- the person has not committed a contravention set out in the notice; and/or
- the notice does not comply with the requirements for the giving of a compliance notice.

A person who applies for a review on the ground that they did not commit a contravention set out in the notice bears the burden of proving this in the review proceedings. The Industrial Magistrates Court may confirm, cancel or vary the notice after reviewing it.

If a notice has not been complied with, the inspector could choose to withdraw it and take enforcement proceedings for contravention of the entitlement provision. Alternatively, the inspector could seek to take proceedings for non-compliance with the notice.

Disclaimer

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