



## Small business

### What has changed?

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amends the *Fair Work Act 2009* (the Act) to provide a range of measures that apply to businesses of all sizes.

Fact sheets covering all amendments can be found on the [Department of Employment and Workplace Relations' website](#). Amendments of particular interest to small business are summarised below.

Small businesses can also seek information and advice from the Fair Work Ombudsman, including through the [Small Business Showcase](#), and the [Employer Advisory Service](#).

### Regulated labour hire arrangement orders (Closing the labour hire loophole)

- This measure will not apply where the **host is a small business employer** (fewer than 15 employees).
- Where the Fair Work Commission is satisfied the host is a small business employer, it will not be able to make an order that labour hire employees must be paid at least what they would receive under the host's enterprise agreement.

### Compliance and enforcement: Criminalising wage theft

- **Criminalising wage theft:** The new wage theft offence will cover intentional underpayments, not honest mistakes. There will be pathways to safe haven for small businesses who have tried to correct mistakes with paying their workers:
  - Small businesses that may have underpaid employees will not be referred for criminal prosecution of the wage theft offence if they can show compliance with a new Voluntary Small Business Wage Compliance Code. The Code will be developed by government in partnership with employer and employee groups.
  - The Fair Work Ombudsman (FWO) may also enter into a cooperation agreement with a person, including an employer, if they disclose that they have engaged in conduct that may amount to the commission of the wage theft offence. The FWO may agree not to refer the conduct for prosecution, after assessing the employer against a non-exhaustive list of factors.

## Enhancing delegates' rights

- Small business employers will not be required to provide reasonable access to paid time for workplace delegate training. All other parts of this measure will apply equally to all employers.

## When will these changes come into effect?

**Labour hire arrangement orders:** These changes commenced on 15 December 2023. Regulated labour hire arrangement orders cannot come into force until at least 1 November 2024.

**Compliance and enforcement: Criminalising wage theft:** The wage theft offence will apply to intentional underpayments that occur after the offence commences. The offence will commence on the later of 1 January 2025, or the day after the Voluntary Small Business Wage Compliance Code is first declared by the Minister for Employment and Workplace Relations. The offence will not commence if the Code is not declared.

**Enhancing delegates' rights:** These changes commenced on 15 December 2023.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>