



Fair Employment Guarantee (FEG) and eligibility

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The Fair Entitlements Guarantee ('FEG') is a safety net scheme that provides assistance for eligible employees who have lost their jobs under specific circumstances. In this blog, we will look at who is entitled, what can be claimed, how to apply and who is ineligible.

Why was FEG introduced?

The previous GEERS scheme was subsequently replaced by the FEG, which came into effect in December 2012. The FEG was introduced to protect the entitlements of employees who have lost their jobs due to the insolvency or bankruptcy of their employer.

With the introduction of the JobKeeper Payment scheme earlier in 2020, which is a subsidy for businesses significantly affected by COVID-19, the government also introduced temporary anti-insolvency laws that last until 31 December 2020.

These laws make it harder for creditors to put companies into administration and shield directors from insolvent trading claims. The changes have kept some redundancies at bay, but we anticipate that a rise in company insolvencies, with consequent redundancies is inevitable, when the emergency pandemic measures are withdrawn.

Who can apply for FEG entitlements?

Employees who have lost their job and meet the following criteria may be able to apply for FEG entitlements.

1. Insolvency of your employer or where you were terminated after, or within six months before, the appointment of a liquidator or bankruptcy trustee for your employer;
2. You are owed at least one of the entitlements listed under 'What can be claimed through the FEG' below; and

3. You were an Australian citizen or the holder of a permanent visa or special category visa that allows you to stay and work in Australia at the time your employment ended.

What can be claimed through the FEG?

If you are eligible to apply for FEG, you can claim any of the following outstanding entitlements:

1. unpaid wages - up to 13 weeks;
2. unpaid annual leave and long service leave;
3. payment in lieu of notice - up to five weeks; and
4. redundancy pay - up to four weeks per full year of service.

Unpaid Superannuation Guarantee contributions cannot be claimed through the FEG scheme. You should pursue claims for unpaid Superannuation through the ATO.

There are strict time limits
to lodge your application

You must lodge a FEG claim **within 12 months** from the later date of when a liquidator was appointed to your former employer, or your employment with your former employer was terminated.

Who is ineligible for FEG?

Unfortunately, you are not eligible to apply for FEG if, for example, you:

1. were a contractor;
2. were a director of the company within 12 months before liquidation;
3. were a relative (as defined by the Corporations Act 2001) of an employee director of the company within 12 months before liquidation; or
4. you do not meet all of the conditions of eligibility set out in the *Fair Entitlements Guarantee Act 2012*.

How do I make a claim?

You can start your claim on the [Federal Government's Fair Guarantee website here](#).

What does this mean for employees?

If your employer is in liquidation or bankruptcy, you may be able to lodge a claim for FEG assistance for certain categories of employment entitlements that are left unpaid by your employer.

In order to apply for FEG assistance, a liquidator or bankruptcy trustee must have been appointed to the employer, and you must have lost your job due to the company's insolvency or bankruptcy (or within the six-month period prior to the appointment of an insolvency practitioner to the company).

If the employer has not entered bankruptcy or liquidation, FEG payments are not available. In those circumstances, you may be entitled to commence a wage claim against your former employer if they are refusing to pay any outstanding entitlements.

Conclusion

FEG is a scheme of last resort that provides financial assistance for unpaid employee entitlements in insolvency. FEG Online Services is the best way to make and monitor your FEG claim.

In the event you are not eligible for FEG, there may be other avenues open to you to pursue your unpaid entitlements, including for example taking legal action against the directors or owners of your employer personally.

Get help from an employment lawyer

If you think you may be eligible for FEG assistance but are unsure whether you meet all the conditions and you are looking for advice and assistance, Hall Payne's experienced [industrial and employment team](#), across the country, can help.

You can [contact us by phone or email to arrange a consultation](#); either face-to-face at one of our offices, by telephone or by videoconference consultation.

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

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