

SUPERANNUATION BULLETIN

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SUPERANNUATION GUARANTEE RULING SGR 2008/D2

The Australian Taxation Office recently issued Draft Superannuation Guarantee Ruling SGR 2008/D2.

If finalised, the ruling would extend the Commissioner's established view on what amounts paid to an employee constitute ordinary time earnings and therefore attract compulsory superannuation.

The ruling is still in draft form but the changes will potentially impact on every employer if adopted.

The ruling may or may not be finalised quickly and as currently drafted. We are aware of correspondence from the ATO stating that they intend to apply the changes from as early as 1 April 2009. We are also aware that a number of industry groups are lobbying Government and the ATO to have the changes stopped.

You will need to follow the progress of the ruling to be able to advise clients.

What is the Ruling about?

The ruling focuses on the key concept of 'ordinary time earnings'. Ordinary time earnings are the earnings paid to an employee in respect of the employee's ordinary hours of work.

Employers must make superannuation contributions of at least 9% of an employee's ordinary time earnings within prescribed timeframes to avoid penalties.

The ruling has been drafted as a replacement to SGR 94/4 which currently provides the Commissioner's view on ordinary time earnings.

What are the proposed changes?

Ordinary Hours and Overtime

- The ruling would expand the generally understood meaning of 'ordinary hours'.
- The ruling adopts the view that an employee's ordinary hours may be more than the hours specified in an industrial arrangement where the hours worked are 'regular, normal, customary or usual' and even if those hours are remunerated at overtime rates.
- Currently it is generally accepted that where an industrial arrangement (such as an award, agreement or contract) specifies ordinary hours, those hours will also be ordinary hours for calculating superannuation.
- It is also currently accepted that overtime pay will not attract superannuation as overtime pay represents earnings in respect of hours outside of an employee's ordinary hours.

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- If adopted, employers would be required to pay super on amounts paid to employees in respect of additional hours where those additional hours were considered 'regular, normal, customary or usual' and even if those additional hours were paid at overtime rates.
- This could potentially impact on any employer who offers regular additional hours to employees (generally regular overtime).

Piece Rates

- The ruling distinguishes workers paid on a 'piece rates' basis. Piece Rate employees are defined in the ruling as any worker paid on the basis of items or units produced.
- The ruling states that all earnings of a piece rate employee will attract compulsory superannuation.
- The ruling includes transport workers paid using the cents per kilometre method and fruit pickers paid on the weight of fruit picked as examples of piece rate employees.

Maternity and Other Leave Payments

- The ruling would also include in ordinary time earnings certain leave payments that do not currently attract superannuation, including maternity leave payments and payments made to an employee while on jury service or absent and receiving employer workers compensation payments.

Further information

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