

FACTSHEET: PAYMENT OF WAGES AND SALARIES

This factsheet outlines your responsibilities as an employer to pay remuneration to your employees.

1. WHERE CAN I FIND THE LAWS ON PAYMENT OF WAGES AND SALARIES?

Part 5 of the Employment Act [Cap 160] (the Act) provides the law on how to pay employees. Minimum wages information is found in *Orders* made under the Minimum Wages and Minimum Wages Board Act [Cap 182].

Information on overtime rates is found in section 26 of the Act. A detailed *factsheet: overtime* can be found in chapter 3 of the Employers' Guidebook, hours of work.

The other main payment that employers must make is contributions to the Vanuatu National Provident Fund (VNPF). These contributions are required under the Vanuatu National Provident Fund Act [Cap 189]. VNPF contributions are not covered in detail in this Employers' Guidebook and more information can be found on the VNPF website <http://www.vnpf.com.vu/p/vnpf-index.html>.

It is, however, important to know that all employers are also required under the Act to register with the VNPF and obtain an employer registration number. All employees in Vanuatu earning a minimum monthly salary of VT 3,000 are required to contribute to the VNPF and therefore should apply to obtain a VNPF membership number. There are a very few exceptions to this. Please refer to the VNPF for details.

The total contribution rate to VNPF is 8%. Employees have 4% of their salary deducted by their employer and paid into the VNPF. The employer also contributes an amount which is equal to 4% of the employee's salary to the VNPF.

2. WHAT IS REMUNERATION? WHAT IS THE DIFFERENCE BETWEEN WAGES AND SALARIES?

Remuneration is not defined in the Act. In Part 5 of the Act remuneration is used to refer to *wages*, *salaries* and other monetary compensation, such as housing allowances, commission based payments and overtime payments. It also includes non-monetary compensation, such as providing a house or a car.

Wage is usually used to refer to payments to employees that are calculated based on the number of hours worked.

Salary is usually used to refer to payments to employees that are not directly related to the number of hours worked, but are an agreed payment per year or month.

These definitions **are not** technical legal definitions, but reflect how most employers in Vanuatu use these words.

3. MUST WAGES/SALARIES/REMUNERATION BE PAID IN CASH, OR CAN I PAY IN KIND, BY PROVIDING GOODS OR OTHER BENEFITS?

Usually wages or salaries must be paid in cash (section 16(1)). The law does not permit employers to pay using a personal cheque, although a labour officer can provide written permission for payments to be made using bank cheque (section 16(1)).

At the time the law was written the possibility of paying by direct deposit into the employee's bank account was not taken into consideration. As a direct deposit is effectively paying *legal tender*, it is acceptable providing that the deposit is being made into the employee's personal bank account, at the employee's request and benefit (section 6).

It is possible to pay part of the remuneration *in kind* in the form of allowances if written approval of a labour officer is provided in advance (section 16(2)). In kind allowances cannot, however, include alcohol or other drugs (section 16(3)).

Bizniz wants to offer Bill a house, which has a market rental value of 100,000 vatu a month, as part of his total remuneration package. As Bizniz will provide Bill a house it wants to pay him 200,000 vatu rather than 300,000 vatu. Can it do this?

Bizniz will need to get written approval of a labour officer, but this arrangement is otherwise permitted.

Bizniz wants to offer Agnes payment at minimum wage rates on its chicken farm. As part of the payment Bizniz wants to give Agnes 2 dozen eggs per week, at market rates and reduce the amount of payment given in cash. Can Bizniz do this?

This is a situation that a labour officer is very unlikely to approve. When an employee is receiving the minimum wage it is an expectation that that wage will be paid in cash, with any other allowances being additional to this payment

4. ARE THERE LIMITS ON WHEN WAGES/SALARIES ARE TO BE PAID?

The maximum period between payments is every 15 days, for employees whose payment is calculated by the hour or the day (waged employees). If waged employees also receive allowances that are not based on the number of hours worked, these allowances can be paid monthly (section 16(7)).

For employees whose payment is not based on the number of hours or days worked (salaried employees) payments can be made monthly (section 16(7)).

Pay periods must be regular (section 16(7)). It is possible to delay the time of payment up to 8 days after the pay period has ended (section 16(6)).

Bizniz pays Sally on a monthly basis. The pay period is 1 calendar month. Bizniz wants to pay Sally on the 5th of each month for work done in the prior month, to give its payroll officer time to properly calculate all allowances. Can Bizniz do this?

Yes it can. The pay period is monthly. Payment is being made less than 8 days after the pay period has finished.

Upon termination of employment, regardless of the employee's pay interval, all payments, including wage/salary, other allowances and payments in lieu of holidays (if applicable) must be paid as soon as employment ceases (section 16(8)).

5. ARE THERE LIMITS ABOUT WHERE PAYMENTS CAN BE MADE?

Payments in cash are to be paid at or near the place of work, unless another arrangement is more convenient for the employee (section 16(4)). Such payments are not, however, allowed to be made in taverns, retail shops or other places of amusement, unless the employee is employed in such a place (section 16(5)).

6. WHAT PAY RECORDS MUST I KEEP?

Employers must keep a record of payments made, which should be signed by each employee or marked by her thumbprint, each time payment is received (section 17(1)). Whilst the law does not specify what must be in this record, it should show the amount of payment and shows how this amount was calculated. Wages or pay records books can be purchased from stationery stores to help with this. There is also an example *employer pay record* in the *tools* section of this chapter.

This record must be kept for at least 3 years by the employer (section 17(2)).

7. IS MY EMPLOYEE ENTITLED TO RECEIVE A PAY SLIP?

If the employee requests it, then he must be given a statement which states the name of the employer and the employee, shows the amount of payment and shows how this amount was calculated. There is no legally required form for this statement (section 16(4)).

An example *payslip* is included in the *tools* section of this chapter. As discussed in the *factsheet: annual leave* section of the Employers' Guidebook it is a good idea to keep records of the amount of annual leave that has accumulated. The example payslip in the tools section therefore includes information on accumulated annual leave, even though this is not legally required.

8. AM I REQUIRED TO PAY SALARIES IN ADVANCE IF MY EMPLOYEE REQUESTS IT?

There is no legal requirement that you give your employee cash advances on their salary if requested. You can, however, voluntarily choose to do this. If you are providing a cash advance it is a good idea to get details in writing in order to protect yourself from any claims that you have not paid wages properly. An example *salary advance agreement* is included in the *tools* section of this chapter.

9. WHAT DEDUCTIONS CAN I TAKE FROM MY EMPLOYEE'S SALARY?

You can make deductions of up to 1/3 of the employee's remuneration in any pay period (section 21) to recover the following costs:

- salary advances (section 21(2)(a))
- the actual cost to the employer of materials or tools supplied to the employee for use outside of work (section 21(2)(b))
- the cost of articles other than materials or tools purchased on credit by the employer for the employee, if the employee made a written request to the employer to purchase these articles (section 21(2)(d))

- the fair value of rations or accommodation provided, if this amount has been approved by a labour officer (section 21(2)(c))
- the cost of food provided by the employer and prepared or eaten at the place of work, if this food has been supplied at the written request of the employee (section 21(2)(d))

You **may** also deduct trade union membership fees and pay them directly to the trade union on the employee's request (section 21(2)(e)). You **are not required** to comply with the employee's request to deduct union fees and organise their payment to a trade union, however. Even though you are not required to comply with your employees' requests to deduct trade union fees and paying them to the trade union, a good employer should be conscious of its duty to try to maintain harmonious working relationships. If deducting union fees and paying them to the union does not create an undue administrative burden a good employer should try to comply with employees' requests in this area.

You are **not** allowed to automatically deduct amounts to recover losses due to negligent or bad work or damage to your property or materials without the written approval of a labour officer (section 21(1)).

10. I AM BEING SUED BY MY EMPLOYEE FOR UNPAID SALARY, BUT WHEN I PAID THEY SIGNED SAYING ACCEPTED AS FULL AND FINAL PAYMENT. CAN THEY SUE ME?

Yes they can sue. A statement to the effect that payment is in full and final settlement of all claims, whether made during the period of the contract or after the contract is not legally binding (section 18(1)). Note that acceptance of payment without complaint is not an implied acceptance that the amount paid is correct (section 18(2)).

Also note that there is a time limitation on claiming unpaid remuneration. Employees can only claim for unpaid remuneration within 3 years of the time that payment should have been made (section 20).

Jack worked for Bizniz for 6 years. He has just resigned. He is now claiming that he was short paid on his housing allowance for his first year of employment. Can he claim this?

Jack is making this claim more than 3 years after the time that this payment should have been made. As this incident falls outside of the time limitation, he cannot claim.