

## Summary of Employer Super Obligations

Unfortunately, many employers get super wrong.

And the consequences can be disastrous:

- late super can attract penalties and interest
- the payment is no longer a tax deduction
- Directors can be made personally liable for unpaid super
- The penalties imposed by the ATO for unpaid super are severe and can extend to fines and even jail time!

To help employers comply with their obligations and avoid severe penalties, the Atticus team produced this guide to cover the most frequently asked questions by employers on their super obligations.

### 1) When is my employee super due?

Employee super must be paid at least every quarter. The due date for each quarter's super is 28 days after the end of the quarter:

JULY – SEPTEMBER quarter	due 28 <sup>th</sup> October
OCTOBER – DECEMBER quarter	due 28 <sup>th</sup> January
JANUARY – MARCH quarter	due 28 <sup>th</sup> April
APRIL – JUNE quarter	due 28 <sup>th</sup> July

You can choose to pay super more frequently than this, e.g. monthly, as long as all super for the quarter is paid no later than the due date.

Importantly, the super fund must have **received** the contribution on or before the due date. This can catch out many employers. As super must now be paid through a clearing house under the [Super Stream rules](#), you should allow 5 – 10 business days for your super clearing house to process and pay your super to the employee's fund. (yes, we agree, even with all this digital technology, in this day and age, this seems ridiculous – is it getting slower?!)

- MYOB, Xero and Sunsuper Super Clearing house users
  - the recommended time frame that you should authorise your super payments is at **least 5 business days before the due date**
- ATO Super clearing house users

- you don't need to allow additional time for payments to be sent to the super funds and this is the only clearing house with this exception. You have met your payment obligations as soon as the clearing house accepts your lodgement and payment.

## 2) Which employees do I need to pay super for?

To answer this, we recommend that you take the view that all employees will need to be paid super, **unless** they satisfy an exemption. This means you will need to pay super for all full-time, part-time or casual workers, company Directors and family members who are receiving wages and temporary residents like backpackers and working holiday makers unless they fall under an exemption.

The exemptions are quite limited:

- An employee earns less than \$450 in a calendar month (always check your award for special requirements as the Hospitality award lowers this threshold to \$350 per month)
- An employee is under 18 or is a private or domestic worker like a Nanny and they work less than 30 hours in a week.
- Non-resident employees for work they do outside Australia
- Some contractors (but see below)

## 3) How much super do I need to pay?

Generally super is payable at 9.5% of an employee's ordinary time earnings (OTE):

$$\text{OTE} \times 9.5\% = \text{super to pay}$$

OTE is the amount your employee earns for their ordinary hours of work. For a simple salaried employee this would be their gross wage but also includes things like commissions, most allowances but generally not overtime payments.

The ATO have produced a checklist on what elements of payroll is included in OTE. [Find the checklist here](#) – we recommend you save this as a favourite in your browser for future quick reference.

Importantly the ATO have recently clarified their position ([click here for more info](#)) in regards to whether super should be paid on Leave loading. Generally yes, super will be payable on leave loading unless the loading is paid because of a loss of opportunity to work overtime whilst the employee is on leave.

If you have employees who receive leave loading you should immediately check your software's payroll settings.

#### 4) Do I need to pay super for contractors?

Yes, sometimes. The general rule is that super is payable if the contractor is paid mainly for their labour. One common example is where a business contracts a Virtual Assistant or VA. For example, if the VA is paid for their personal skills or labour, they are paid on an hourly basis and they can't delegate the work to another contractor then super could be payable for that contractor.

If you have contractors you should use the [ATO's super guarantee eligibility decision tool](#) to check your obligations. If you use the tool you should always keep a copy of the result on file in case of future ATO audit.

#### 5) How do I pay my super?

You are no longer eligible to pay super directly to the fund by BPAY, Cheque or Electronic transfer. You must now pay your super via a super clearing house.

In the last few years, the Government introduced [Super stream](#) which requires you to electronically report your super through a super clearing house. This means that you can make all your contributions in one single transactions even if the contributions are going to multiple super funds.

Many employer's have found this to be a positive change by the Government as it's a real time saver especially where they have a number of employees with multiple super funds to pay.

Currently the only exemption to super stream requirements are:

- Personal contributions made to your super fund
- Rollovers to or from an SMSF
- Employer contributions to an SMSF where the employer is a related-party

The Liberal Government have previously touted changes to extend the requirements of super stream to SMSF's however as at April, 2019 this legislation has lapsed due to the upcoming Federal Election.

Please note that this advice is general advice only and is a summary compiled by our team based on frequently asked questions from our clients. This article does not take into account your individual circumstances and you should always seek specific advice about your situation. Frustratingly for many employers the rules are incredibly complex so for more information on super obligations for your employees we recommend your check out the [ATO's guide here](#) or call us for specific advice or an employee obligation health check if you have any concerns.