

# CHANGES TO SUPERANNUATION

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## As from July 1, 2009 changes to Superannuation changes become effective - so what is 'ordinary time earnings'?

Employers have to pay nine per cent of 'ordinary time earnings' as superannuation for most employees.

Difficulties can arise when deciding which payments are 'ordinary time earnings'.

For example, a few years ago a case against an employer ruled that all overtime payments should be superable, despite Australian Taxation Office (ATO) guidance specifically stating that superannuation wasn't payable on overtime.

This created uncertainty amongst employers about their obligations.

In 2008 the ATO reviewed the definition of 'ordinary time earnings' and following is a quick-reference extract from Superannuation Guarantee Ruling 2009/2, which will come into force on July 1, 2009.

In relation to overtime, the ruling is very clear.

If an employee works overtime under an award that defines ordinary time, then it makes no difference how frequently or regularly the employee works overtime.

Payments made under such an award for overtime are not superable.

Superannuation treatment of payments made in lieu of notice will change - the old interpretation stated that superannuation did not need to be paid on payment in lieu of notice.

After July 1 the payment becomes 'ordinary time earnings' and will be superable.

Lump sum payments on termination for unused annual, sick or long service leave do not attract superannuation.

A copy of SGR 2009/2 can be obtained from [www.ato.gov.au](http://www.ato.gov.au). 

PAYMENTS TO AN EMPLOYEE IN RELATION TO...	SALARY OR WAGES? (TAXABLE INCOME)	OTE? (SUPERABLE)
<b>Awards &amp; agreements</b>		
A simple overtime situation	Yes	No
Overtime hours - agreement prevailing over award	Yes	No
Agreement supplanting award removes distinction between ordinary hours and other hours	Yes	Yes
No ordinary hours of work stipulated	Yes	Yes
Casual employee - <i>Shift loadings</i>	Yes	Yes
<i>Overtime</i>	Yes	No
Casual employees whose hours are paid at overtime rates due to a 'bandwidth' clause (note: otherwise known as overtime penalties for work performed outside the spread of hours)	Yes	No
Piece rates - no ordinary hours of work stipulated	Yes	Yes
Overtime component of earnings based on 'hourly driving rate' formula stipulated in award	Yes	No
<b>Allowances</b>		
Allowance by way of unconditional extra payment	Yes	Yes
Expense allowance expected to be fully expended	No	No
Danger allowance	Yes	Yes
Retention allowance	Yes	Yes
Hourly on-call allowance in relation to ordinary hours of work for doctors	Yes	Yes
<b>Payment of expenses</b>		
Reimbursement	No	No
Petty cash	No	No
Reimbursement of travel costs	No	No
Payments for unfair dismissal	No	No
Workers compensation - <i>Returned to work</i>	Yes	Yes
<i>Not working</i>	No	No
<b>Leave Payments</b>		
Annual leave	Yes	Yes
<b>Termination payments</b>		
Termination payments - <i>In lieu of notice</i>	Yes	Yes
<i>Unused annual leave</i>	Yes	No
<b>Bonuses</b>		
Performance bonus	Yes	Yes
Bonus labelled as ex-gratia but in respect of ordinary hours of work	Yes	Yes
Christmas bonus	Yes	Yes
Bonus in respect of overtime only	Yes	No