

Article Information

Service: Employment & Labour

Sector: Private Clients

How to be Super with Your Employees' Superannuation Obligations in 2022

With so much happening and changing in relation to your obligations to your employees, it's important to regularly revisit the important topic of your business' superannuation obligations.

1. Removal of Minimum Threshold for Superannuation Contributions

In a move to assist employees with building superannuation nest eggs, the minimum threshold of \$450/month for superannuation contributions was removed on 22 February 2022 with the passing of the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2021*.

This change comes into effect on 1 July 2022.

This change means that superannuation contributions are required to be made on any earnings regardless of the amount, including where the employee is a casual and in some cases where the individual is a contractor (we say more about this below). There are still some other eligibility criteria that have to be satisfied so if you're concerned about whether you need to make superannuation contributions to a particular individual please reach out for assistance.

2. Going Up - The Amount of Compulsory Superannuation Contributions Required

Even with all of the budget announcements over the last week and a new Federal Government being elected, superannuation contributions are still increasing in accordance with the programmed increases.

This means that the amount of compulsory superannuation contributions is increasing to 10.5% on 1 July 2022. This increase is consistent with the Super Guarantee's legislated increase, which is expected to reach a maximum of 12% in 2025. There have been recent suggestions that the Albanese government is investigating the possibility of further increases to the amount of compulsory superannuation contributions.

3. Stapled Superannuation Funds

In November 2021, a new obligation was introduced which requires employers to check for a 'stapled' superannuation fund in the event your new employees do not exercise their choice to nominate a fund when they commence employment with your business.

This extra step arises when a new employee does not exercise their choice to nominate a particular fund but may already have a superannuation fund from a previous job.

The policy behind this requirement is that it stops new superannuation accounts being needlessly opened for an employee each time they change jobs.

In the event that you need to check for a 'stapled fund' for an employee, you can contact the [Australian Taxation Office](#) to ask them to supply you with details of the fund (in the event the employee does not have that information readily available for you).

4. But what about Superannuation for Contractors?

This is a common area for mistakes to be made but certain contractors will be entitled to superannuation contributions

under the Superannuation and not making these contributions can be an expensive error.

If the contractor is engaged 'principally for their labour' and they earn over \$450/month, then an obligation to pay superannuation arises. Once the removal of the \$450/month threshold occurs in July, it will just be a question of whether the contract for services is one principally for the individual's labour.

The reason why certain types of contractors are entitled to superannuation contributions is that the definition of 'employee' is broader in the *Superannuation Guarantee (Administration) Act 1992 (the SGA Act)*. Specifically, section 12(3) of the SGA Act states a person is an employee, "*if a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.*" Circumstances where an employer needs to pay a contractor SGC are when:

- there is a contract (written or oral);
- which is wholly or principally for the labour of a person; and
- that person must work under that contract.

Please note, it is not relevant if the contractor conducts his or her own business, as long as the contractor was engaged by the employer to provide his or her labour.

5. What employers need to keep an eye on

An employer who fails to make appropriate superannuation contributions can be liable for substantial penalties. It is important therefore that employers undertake a review of their existing employees, including contractors, and determine if they are being paid the correct amount of superannuation, and whether the payroll system is prepared for the increase in superannuation contributions on 1 July 2022.

If you have any questions about whether a contractor you have engaged is entitled to SGC, we recommend you contact a member of Piper Alderman's Employment Relations Team.

**Please note that this article is not intended to provide legal or financial advice.*