

## Q&A

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<b>Date</b>	5 March 2015
<b>Subject</b>	Bespoke Lifestyles Limited - Information for participants and workers

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### Superannuation Questions for Participants

#### Q: When do you have to pay a worker superannuation?

A: You are liable to pay superannuation guarantee when the following conditions are satisfied:

1. The worker is an individual and is not working under a company or trusts Australian Business Number (ABN); and
2. At commencement of the working relationship with yourself and the worker, it is not said in the contract (verbal or written) on whether the worker is able to substitute another qualified individual in their absence; and
3. The individual works more than 30 hours per week.

#### Example

Harry (the participant) requests the work of Joe (the worker) for care services.

Joe invoices Harry for services provided under his Company, being Joe's Care Pty Ltd.

Harry is not required to pay any superannuation guarantee in respect of the hours worked by Joe. This is because Joe is not operating as an individual.

#### Example

Harry (the participant) requests the work of Joe (the worker) for care services.

Joe is a sole trader.

It was agreed in the initial contract between Harry and Joe that if Joe was unable to attend a shift, Joe had the option to offer Harry a substitute individual with equivalent qualifications and background in Joe's absence.

Harry is not required to pay any superannuation guarantee in respect of the hours worked by Joe. This is because Joe has the right (even if it's not exercised) to substitute a worker in his absence.

**Q: How much superannuation guarantee are you liable to pay?**

A: Superannuation guarantee is calculated by multiplying a worker's ordinary time earnings by the current rate of superannuation guarantee. For payments made after 1 July 2014, this rate is 9.5%.

**Q: What are ordinary time earnings?**

A: Below is an edited excerpt from the Australian Taxation Office which identifies which payments are subject to superannuation guarantee (Appendix 2):

Payments to a worker in relation to:	Ordinary time earnings?	Assessable income to the recipient?	Additional notes
Ordinary time earnings hours worked	Yes.	Yes, any income from ordinary time earnings payments should be included in your income tax return	1. Ordinary time earnings pay is included in superannuation guarantee calculation. 2. Ordinary time earnings hours are included in 30 hour weekly cap for superannuation guarantee calculation
Overtime hours - Award stipulates ordinary time earnings hours to be worked and employee works additional hours for which they are paid overtime rates	No.	Yes, any income from overtime payments should be include in your income tax return	1. Overtime pay is not included in superannuation guarantee calculation. 2. Overtime hours are not included in 30 hour weekly cap for superannuation guarantee calculation
Hourly on-call allowance in relation to overtime hours (sleep-over & 24 hour shifts).	No. On-call allowance received during sleep-over and 24 hour shifts is received during 'overtime' period.	Yes, any income from allowances should be include in your income tax return	1. Allowance pay <u>not</u> included in superannuation guarantee calculation.
Hourly on-call allowance in relation to ordinary time earnings hours	Yes. On-call allowance received, to be on call during ordinary time earnings hours (excludes sleep-overs and 24 hour shifts)	Yes, any income from allowances should be include in your income tax return	1. Allowance pay <u>is</u> included in superannuation guarantee calculation, when ordinary time earnings hours worked exceeds 30

			hours/ pay week.
Bonus (performance/ Christmas/ thank you)	Yes.	Yes, any income from bonuses should be include in your income tax return	1. Bonus pay <u>is</u> included in superannuation guarantee calculation, when ordinary time earnings hours worked exceeds 30 hours/ pay week.

Example

Joe works 33 ordinary time earnings hours and 5 overtime hours, a total of 38 hours during the pay week.

As a thank you Harry pays Joe a bonus of \$500 at Christmas. The bonus payment is a thank you gift and not in lieu of overtime payments.

Payment detail	\$
33 ordinary time earnings hours	1,000
5 overtime hours	500
Christmas bonus	<u>500</u>
Total payment to Joe	<u><u>2,000</u></u>

Joe has worked in excess of 30 hours during the pay week; therefore Harry is liable to pay Joe superannuation on his ordinary time earnings.

For this example, ordinary time earnings include:

Ordinary time earnings	\$
33 ordinary time earnings hours	1,000
Christmas bonus	<u>500</u>
Ordinary time earnings	<u>1,500</u>
Superannuation on ordinary time earnings	x 9.5%
Superannuation payable to Joe's nominated superannuation fund	<u><u>142.50</u></u>

Example

Harry pays Joe \$1,000 for 33 ordinary time earnings hours' work during a pay week. Joe has exceeded 30 hours of work in the pay week. As a result Harry is required to pay \$95 (9.5% of \$1,000) to a complying superannuation fund nominated by Joe.

### Example

Harry pays Joe \$900 for 30 ordinary time earnings hours' work during a pay week. Joe has not exceeded 30 hours of work in the pay week. No superannuation is payable to Joe.

A detailed checklist of what constitutes ordinary time earnings for superannuation guarantee purposes is included at the end of this document at Appendix 2.

### **Q: When calculating the number of hours worked - how many hours does a sleep-over shift count towards?**

A: Under the Fair Work Commission (Social, Community, Home Care and Disability Services Industry Award 2010) refer to Appendix 1 (the 'Award'); the span of a sleep-over will be for a continuous period of 8 hours. During this period an allowance of 4.9% of the standard rate is paid. The standard rate is the minimum wage for a social and community services employee is \$25.39 (Per the Social 7 Community Services Award (AN150140) level 3 at pay point 3 - Appendix 4).

For superannuation purposes, the 8 hour 'sleep-over' period does not constitute ordinary time earnings and is therefore excluded from the 30 hour test.

In the event the individual is required to perform work during the sleep-over period; the worker will be paid for the time worked at the prescribed overtime rate (noting a minimum payment for one hour worked). These overtime hours worked are not subject to superannuation and do not count towards the 30 hour cap for superannuation guarantee purposes.

### Example

Harry requests the work of Joe for a sleep-over shift. Joe's shift commences at 5pm until 7am the following morning, a total of 14 hours.

Joe has not had to do any work during the night.

Harry pays Joe for 6 ordinary time earnings hours (14 total hours at Harry's, less the 8 hour 'sleep-over period') plus the allowance payable for the 8 hour period (4.9% of the standard hourly rate).

Only the 6 hours counts towards Joe's 30 hour weekly cap for superannuation purposes.

### Example

Assume the same facts as the above, but this time Joe has to assist Harry during the night for a total of two hours.

Joe is now paid for 6 ordinary time earnings hours, 2 hours overtime, and an overnight allowance.

The additional 2 hours overtime worked by Joe are overtime hours which do not count towards Joe's 30 hour cap for superannuation purposes.

### Example

During a pay week, Joe is paid for 30 ordinary time earnings hours and 5 hours overtime, a total of 35 hours.

No superannuation is payable to Joe, as ordinary time earnings hours do not exceed 30 hours.

### **Q: When calculating the number of hours worked how many hours does a 24 hour shift count towards?**

A: Under the Fair Work Commission (Social, Community, Home Care and Disability Services Industry Award 2010) refer to Appendix 1 (the 'Award'); a 24 hour care shift requires a worker to be available for duty in a client's home for a 24 hour period. The worker is required to provide a total of no more than 8 hours of care during this period.

In the event the individual is required to perform work outside in excess of the 8 hour period, these overtime hours worked are not subject to superannuation and do not count towards the 30 hour cap for superannuation guarantee purposes.

### Example

Harry requests the work of Joe for a 24 hour shift. Joe's shift commences at 5pm until 5pm the next day, a total of 24 hours.

Under the award, Joe is only required to work 8 hours, therefore any work performed in excess of the 8 hours is overtime and is not subject to superannuation guarantee.

### **Q: When are superannuation guarantee payments due to be paid to the nominated superannuation fund?**

A: You have to pay superannuation guarantee contributions for each eligible worker at least four times a year. Payments must be paid and received by the super fund before the quarterly cut-off dates:

Quarter	Period	Payment cut-off date
1	1 July - 30 September	28 October
2	1 October - 31 December	28 January
3	1 January - 31 March	28 April
4	1 April - 30 June	28 July

### Example

Harry calculates that during the period 1 July 2014 - 30 September 2014, he is liable for \$1,000 of superannuation guarantee for Joe.

Harry needs to remit this balance to Joe's nominated superannuation fund account prior to 28 October 2014.

**Q: How do you know where to pay workers' superannuation contributions?**

A: When you offer your worker a choice of super fund (where they want their contribution to be paid), you must also tell them the name of the fund you will pay their super to if they don't choose a fund. This is referred to as your default fund. You provide this information to your workers by completing section B of the Standard choice form (NAT 13080) at the time of the employee commencing their employment with you.

The super fund you choose must:

- be a complying fund
- be registered by the Australian Prudential Regulation Authority (APRA) to offer a MySuper product
- offer a minimum level of life insurance, as set out in the regulations (with some exceptions).

To make sure your nominated fund meets these requirements, check with the trustee or an authorised representative of the fund.

When choosing a fund you will also need to be mindful of the relevant award the worker is paid under. In most cases this would be the Social, Community, Home Care and Disability Services Industry Award. Within this award it specifies under clause 23 that contributions must be contributed to one of the following superannuation funds:

1. FSS Trustee Corporation;
2. Health Industry Plan
3. HESTA Super Fund
4. Catholic Super
5. Mercy Super
6. Sunsuper
7. Tasplan
8. CareSuper
9. NGS Super
10. Australian Super
11. Statewide Superannuation Trust

**Q: How do I elect a default fund to which I can make a contribution?**

A: Firstly, you the employer/ payer must be registered with the superfund as an employer to be eligible to make contributions.

1. If you have an ABN you can register and make super guarantee payments on behalf of workers.
2. If you don't have an ABN you can call around to see which super funds will accept contributions without holding an ABN.

3. If you don't have an ABN you can ask the worker to set up a retirement savings account which the participant can make payments via BPAY.

**Q: How do you check the workers' Superannuation BPAY details provided are correct?**

A: Upon registering as an employer with a superannuation fund, they usually will provide you with the BPay details for each employee each quarter.

**Q: What happens if a worker does not provide me with their superannuation details before the date I need to make payment?**

A: The payment will need to be made into the default fund (see above) on or before the due date for superannuation guarantee payments.

**Q: If the worker has not worked over 30 ordinary time earnings hours can the participant still contribute superannuation to them?**

A: Yes they can

**Q: My worker has requested that they do not want super paid, but would rather receive a higher rate, can this be in an agreement?**

A: No. Superannuation guarantee is a requirement by law and needs to be met to avoid penalties being imposed on you by the ATO.

**Q: Can superannuation guarantee amounts be paid directly to the worker?**

A: No. Under the relevant legislation superannuation guarantee payments are required to be made to a complying superannuation fund. Payments made directly to the worker would not satisfy this requirement.

**Q: Am I required to withhold taxes (PAYG) from payments made to workers?**

A: You are required to withhold tax from payments made to employees. If you make payments subject to withholding, you must:

1. Register for PAYG Withholding
2. Withholding amounts from wages
3. Lodge activity statements and make payments to us
4. Provide payment summaries to employees
5. Provide the ATO with a PAYG Withholding payment summary annual report

**Q: How do I register for PAYG Withholding?**

A: There are multiple options for registering dependent on whether or not you have an ABN or wish to apply for an ABN.

#### Option 1 - you wish to apply for an ABN

If you don't already have an ABN, you can register for PAYG withholding at [abr.gov.au](http://abr.gov.au) at the same time as you apply for an ABN, using the same form.

You should register once you know that you will be required to withhold an amount. You must apply to register by the day on which you are first required to withhold an amount from a payment.

#### Option 2 - You already have an ABN connected to a separate business

If you have an ABN, you can register for PAYG withholding under a new branch number to keep the activity of your domestic activities separate from your business activities.

To apply to register a PAYG Withholding branch you will need to complete ATO form 'Application to register a GST or PAYG Withholding branch'. Note only sections A,B,C,D,F and H are required to be completed.

#### Option 3

If you do not have or wish to obtain an ABN, you can register for PAYG withholding by applying for a withholding payer number (WPN). You can do this by completing ATO form [Application to register a PAYG withholding account \(NAT 3377\)](#)

#### **Q: I don't have an obligation to withhold PAYG, but a worker has requested PAYG be withheld from payments made. How do I do this?**

A: Both yourself and the worker will need to complete a Voluntary agree for PAYG Withholding (available from the ATO website when you search NAT 2772-04 in the search field).

#### How much withholding should be withheld?

The withholding rate under a voluntary agreement is either the payee's instalment rate as notified by the ATO, called the Commissioner's instalment rate (CIR) or a flat rate of 20%.

If the worker:

- Has a CIR of more than 20%, you withhold at the CIR (the amount notified by the ATO); or
- Has a CIR of 20% or less, you withhold at the flat rate of 20% unless agreed otherwise with the worker; or
- If the worker does not know their CIR at the time of the agreement, you withhold at the flat rate of 20%.

#### What are my reporting obligations to the ATO?

You, as the payer are required to:

1. Register for PAYG Withholding;
2. Withhold amounts from wages;
3. Lodge activity statements and make payments to the ATO
4. Provide payment summaries to employees
5. Provide the ATO with a PAYG Withholding payment summary annual report

**Q: I have received an invoice from a worker which includes GST, is this correct?**

A: The supply of home care services is GST Free under Australian Legislation when the service:

- is provided to one or more aged or a person with a disability;
- The service being provided to the participant falls under Part 2, of schedule 1 of the Quality of Care Principles 1997. See appendix 3.

A GST Free supply means that the worker should not include GST on the invoice provided to you.