

Employers Beware - Significant Penalties Imposed for Underpayment of Wages

November 2017

The operators of a Gold Coast business have recently been penalised a total of almost \$300,000 for underpaying workers, breaching record-keeping laws and providing false information to the Fair Work Ombudsman.

The significant penalties were imposed by the Federal Circuit Court following a Fair Work audit during which underpayments amounting to almost \$60,000 within a four-month period were identified. The Fair Work inspector also discovered that the company had falsified their records.

The Judge considered the conduct to be deliberate and imposed the significant penalties due to the serious nature.

Fair Work Ombudsman Natalie James says any businesses found to be breaching record-keeping laws run the risk of receiving even higher penalties in the future.

What Should Employers Do?

Take proactive steps to ensure compliance with the Fair Work legislation and applicable Award by:

- Identifying what Award covers your business and employees;
- On hiring new employees and periodically thereafter, obtain advice (e.g. by contacting Employer Assist) on the appropriate pay rates and entitlements;
- Understanding your obligations under the Fair Work legislation and Award(s);
- Conducting regular compliance audits;
- Implementing comprehensive and compliant employment contracts tailored to your workplace;
- Properly record any salary or "over Award" arrangements in an employment contract with suitable set-off clauses to avoid disputes;
- Investigating any payroll errors or complaints by employees;
- Ensuring your record keeping is compliant and up to date;
- Keeping up to date with minimum wage increases and pass the increases on when required;
- If it is discovered that an employee has been underpaid, back paying the employee as soon as possible and record the back payment in the employee's pay records.
- Compliance Audits
- At a bare minimum, compliance audits should:
 - Identify Award coverage;
 - Review existing rates of pay and classifications to ensure wages are calculated correctly;
 - Review current rosters and hours of work to ensure correct rates are being applied (e.g. overtime, allowances, loadings, penalties etc.) and other obligations are being met (e.g. meal and rest breaks etc.);
 - Review workplace policies and practices to ensure compliance with the legislation and Award(s);
 - Review payslips, employee records, and existing contracts of employment to ensure compliance with the legislation and Award(s);

If any non-compliance is identified, make appropriate recommendations.

Employer Assist can conduct compliance audits for members on request.

Employment Contracts

Employment contracts set out the terms and conditions of an employment relationship and must not be contrary to the Fair Work legislation, Award(s) or other applicable laws.

Written employment contracts are always preferable to oral agreements which are difficult to enforce, especially when disputes arise. Employment contracts are essential to your business and should be used as a tool to ensure compliance, protect the interests of the business and properly manage employees.

Annualised salaries or over Award payments are a common way for employers to manage their obligations under an Award. However, it is important to note that paying an employee a salary or over Award amount does not displace the obligations and entitlements under an Award or the need for a written employment contract.

Employers must ensure that the employee is paid at least what they are entitled to be paid under an Award. Including a properly drafted set-off clause in the employment contract is vitally important to ensure that both parties understand and have agreed that the amount paid to the employee includes and is set off against their statutory and Award entitlements.

You can contact Employer Assist for advice on drafting and implementing employment contracts for your business.

Record Keeping

Employers must make and maintain accurate and complete records for all employees including, but not limited to, the recording of pay and superannuation contributions.

Pay and superannuation contribution records must:

- be kept for 7 years;
- be in a legible form in English;
- be readily accessible to a Fair Work Inspector;
- not be changed unless to correct an error; and
- not be false or misleading.

Employer Assist can provide members with advice and resources to assist you with our record keeping obligations including the type of information that must be included on pay and superannuation contribution records.

HVIA Member Benefits

Contact Employer Assist on 1300 694 842 or hvia@employerassist.com.au to discuss how we can assist you with compliance audits, employment contracts and your record keeping obligations.

This article is intended for information purposes only and should not be regarded as legal advice. Please contact Employer Assist by Industry Legal Group for specific legal advice.