



MINIMUM WAGE INCREASES FOR GROUP 3 AWARDS FROM THE 1ST OF FEBRUARY 2021

In July 2020, we published an article in which we addressed the decision of the Fair Work Commission to increase the minimum rates of pay under all modern awards by 1.75%. A copy of that article can be found [here](#).

In that article, we noted that the Commission has taken the decision to stagger the implementation of this increase across three different groups. For awards that were assigned to Group 1, the wage increase took effect in the first full pay period on or after 1 July 2020. The mandatory increase was then applied to Group 2 awards in the first full pay period on or after 1 November 2020. A copy of our article discussing the increase for Group 2 awards can be found [here](#).

For Group 3 awards, the 1.75% increase to minimum rates takes effect on 1 February 2021. The length of the delay in this instance was based on the Commission's assessment that the industries that make up Group 3 were among the hardest hit financially by the COVID-19 pandemic.

Each award in Group 3 falls into one of the following five categories:

- Accommodation and Food Services (including but not limited to the *Fast Food Industry Award*);
- Arts and Recreation Services (including but not limited to the *Live Performance Award*);
- Aviation (including but not limited to the *Aircraft Cabin Crew Award*);
- Retail (including but not limited to the *General Retail Industry Award*); and
- Tourism (including but not limited to the *Marine Tourism and Charter Vessels Award*).

A full list of the awards in Group 3 can be found [here](#).



If a business has any employees who are covered by any of the awards in Group 3, it is essential that they ensure that each employee in question is paid at least the increased rate to which they are entitled from the first full pay period commencing on or after 1 February 2021.

To assist employers to comply with their obligations, the Fair Work Ombudsman publishes Pay Guides for each modern award. The latest pay guides for the Group 3 awards were published on 18 January 2021 and contain the minimum rates that will apply from 1 February 2021 onwards.

Employers of employees covered by Group 3 awards should, if they have not already done so, urgently conduct an audit of the wages they are currently paying to their employees to determine the steps they need to take to ensure compliance with the new pay rates.

It is critical that those employers who pay an annualised salary also conduct sufficient calculations to ensure that the current salaries are high enough to incorporate the new pay rates.

As a general rule, employers should conduct wage reviews every 6 months or so to ensure compliance with their obligations and avoid inadvertent breaches of the terms of the relevant award(s).

An employer who fails to pay its employees in accordance with the relevant award (or the National Minimum Wage, if there is no award which applies to a particular employee or group of employees) will be in breach of the *Fair Work Act 2009 (Cth)*.

The consequences of this can be severe: contravention of a modern award can result in fines of up to \$13,320 for individuals or \$66,600 for companies. The contravention does not even need to be intentional; these fines will be levied even in circumstances of inadvertent non-compliance. Where an employer *did* know they were contravening the relevant provisions of the award (and their contravention was part of a systematic pattern of conduct affecting one or more people), they will likely be deemed to have committed a “serious contravention.” The fines levied for severe contraventions are even greater: up to \$133,200 for individuals or \$666,000 for companies. The employers will then need to contend with the (often substantial) cost of giving back pay to the affected employees to ensure they receive what they are entitled to.

In these financially challenging times, most employers are not in a position to cope with penalties of such magnitude. This says nothing of the reputational damage that is brought to bear on a business by the imposition of a public order for non-compliance with workplace laws.

Given the increased focus in recent times by the Fair Work Ombudsman on taking action against the so called “wage theft” epidemic, it is more important than ever for employers to maintain vigilance against non-compliance with minimum wage requirements. Murfett Legal is here to assist employers with implementing measures to avoid falling foul of these obligations.

Please reach out to Kate Walawski, Partner in Employment and Workplace Relations or Martin Fletcher, Solicitor in Employment and Workplace Relations if you are unsure regarding your business' existing levels of compliance and want to mitigate against existing or future risk and exposure for your business and you personally.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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