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UNDERPAYMENTS:
A LESSON FROM “THE FRESH FOOD PEOPLE”

Underpayment of wages or “wage theft” claims continue to make the headlines, with Woolworths being the latest Australian company to admit to widespread underpayment of wages to the tune of around $300 million.

So, how does such a large and well-resourced company get it so wrong?

In this most recent case, the focus was on Woolworths’ store-based employees who received an annual salary.

After undertaking a review earlier this year, the company identified that around 5,700 salaried staff were working hours that had not been adequately factored into the employees’ individual salary settings.

Consequently, the salaried employees in question, who were working across Woolworths’ supermarket and metro stores, were earning less under their employment contracts than what they were entitled to under the General Retail Industry Award 2010.

Woolworths quickly went into damage control and have promised to backpay employees their full entitlements before Christmas.

A big company like Woolworths can mobilise immediately to rectify an underpayment issue. They have issued an apology, self-disclosed the breach to Fair Work and assured staff that all underpayments will be identified and fixed.

Unlike Woolworths, family-run or small to medium sized businesses have very little (if any) margin for error. Even one underpayment can be enough to compromise the viability of the business.

To minimise the risk of claims related to the underpayment of wages, employers must take care to ensure they strictly comply with the terms and conditions contained in any modern award that covers and applies to their staff.

<u>A few key lessons from the Woolworths’ case</u>

1. *Know the source of workplace entitlements*

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Having a clear understanding of those employees who are award/agreement free, and those who are award-covered or agreement-covered is absolutely crucial.

2. Confirm which award applies

There are hundreds of occupation and industry-based awards, so the chances are you will have staff covered by at least one award.

Check the coverage clause of the award to make sure you have selected the most appropriate award.

3. Correctly classify your staff

Once you have accurately identified which award applies, take care to ensure staff are correctly classified. Many employers under-classify staff, which may then result in an underpayment.

4. Do the maths

If there are staff on annualised salaries or all-inclusive rates, as a business you will need to monitor these employees closely. In particular, attention must be paid to the employees' hours of work and timesheets to be able to cross-check whether the annual salary or all-inclusive rate is sufficiently high to factor in and absorb all the applicable hours of work and entitlements.

What's next in this space?

Employers need to remain vigilant; the Fair Work Ombudsman (FWO) is continuing its campaign on underpayment of wages and award non-compliance. It is likely businesses will continue to be investigated and audited by the FWO for the rest of this year and heading into 2020.

Breaking workplace laws can be costly and reputationally damaging.

Contraventions of workplace laws can attract large fines – up to $63,000 for a company and $630,000 for 'serious contraventions' – and this is on top of any backpay that may be owing to staff.

If you own or run a business and have concerns you may not be fully compliant with workplace laws, including modern awards, err on the side of caution, do an internal review and take legal advice.

For further information or assistance contact Murfett Legal on +61 8 9388 3100.

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