

Waging a War on Underpayments

The real cost of underpaying employees

October 2021

The recent high profile corporate underpayments by household name employers including Woolworths, 7 Eleven, Commonwealth Bank and Bunnings has brought the matter of employee underpayments to the attention of media and prospective employees. The reputational damage and cost of rectification can be catastrophic. It is therefore essential that businesses get it right and protect directors from being personally liable and having to face adverse legal action.

Complying with your duties can be made easier if you know where to look for system or operational deficiencies.

Instances which may lead to an underpayment

Through previous and current cases where we have acted for clients, and our research into high profile cases, we have identified 6 high risk events that may lead to an underpayment. These are as follows:

1. Most awards are very complex and in many cases there has been basic misinterpretation of clauses in relation to shift allowances, overtime payments (particularly around minimum breaks between shifts), penalty rates, loading and increments in employee grades based on time in the position;
2. Enterprise Agreements have been renegotiated or they have been incorrectly entered into your payroll system by inexperienced staff;
3. Incorrect record of hours worked resulting to incorrect application of pay rates;
4. Change in payroll systems and pay elements have been flagged incorrectly for the relevant employment tax considerations;
5. No formal salary and performance review process undertaken to evaluate the employee's position or classification level if they are in accordance with the Enterprise Agreement; and

6. Industries where sub-contractors, vulnerable and migrant workers are engaged.

Detecting underpayments

Regular internal hindsight reviews are an effective way to detect underpayments. Such reviews can be conducted as part of the internal governance infrastructure and on an annual basis along with salary and performance reviews.

What to do if you suspect

Being accountable, approachable and prepared are key to ensuring all staff feel connected and informed since they are the most affected from any underpayments. Open up clear lines of communications as you plan your path to rectification. This may include informing and negotiation with the Unions.



What to expect

When you suspect or detect an underpayment of wages, it is often a very labour intensive exercise in understanding if there has in fact been an underpayment and if so, the extent of the underpayment. Through the court proceedings, underpaid employees can seek to recover the underpayment of wages for up to six years after the amount became due and payable. Along with the underpaid wages, there are other considerations required including superannuation guarantee, payroll tax, workers compensation and PAYG withholding.

Nexia can help

If you would like reassurance that you are paying your employees correctly, to provide comfort to your Board or to protect your Directors, please reach out to Nexia. We can help interpret and understand if there has been an underpayment and if so, to quantify the likely exposure. We will be with you every step of the way providing assurance and guidance on communication to your employees and Unions, if necessary.

If you have any concerns about employment payments or any questions in relation to the above, please contact your local Nexia Advisor.

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