

CLIFTON HALL

Payroll Compliance Review

The complexity of Australia's employment laws has led to an increase in employee underpayments, many of these unintentional. A Payroll Compliance Review can ensure wages and other entitlements have been calculated correctly, and may assist in avoiding further penalties.

Why does underpayment occur?

While the modernisation of awards has led to greater consistency across different industries, there is often still uncertainty with the overlap and differing treatment of entitlements.

This uncertainty stems from the myriad of potentially applicable instruments, such as:

- modern awards
- the National Employment Standards
- collective agreements
- individual flexibility agreements
- enterprise bargaining agreements
- individual employment contracts

Often a business will have a number of different awards that apply to its workforce, each with various classifications that are not always subject to regular review through the period of employment.

The Fair Work Ombudsman (FWO) has identified a number of key industries in which underpayment issues are more prevalent, these include hospitality, manufacturing, retail, media and healthcare.

In our experience, the complicated allowance structures found in industries such as transport and construction are often incorrectly applied, leading to continued payroll errors.

Many of Australia's largest employers have admitted to unintentionally underpaying staff in recent years

Despite the advancement in payroll systems, underpayment appears to have been more prevalent (or at least more identified and disclosed) in recent years with several of Australia's largest employers admitting to unintentionally underpaying staff.

The issue has also garnered significant media attention, where the phrase 'wage theft' was coined. The recent High Court of Australia decision of *Workpac v Rossato* also attracted interest around determining if an employee was truly employed on a casual basis.

Some of the warning signs an employer may not be correctly calculating wage entitlements include:

- paying an employee a salary where they are covered by a modern award which includes overtime rates
- adopting a flat rate of pay for all hours worked
- not adopting any penalty rates for employees who work outside the traditional '9-5 hours' Monday to Friday
- the engagement of sub-contractors in circumstances that suggest they should be classified as employees
- part time employees working more than their contracted hours

Why is it a problem?

The FWO has stated that the majority of wage underpayments are caused by employers failing to meet their obligations in the following areas:

- failing to correctly apply annualised salary agreements to employees covered by a modern award
- failing to conduct annual review to ensure that annualised salary arrangements properly compensate for overtime and penalty rates
- failing to pay employees according to their correct award classifications and pay grade

With large HR and payroll departments making such mistakes, it's easy to understand why many small businesses struggle to pay their employees correctly.

These problems may come to light when identified by a potential purchaser of the business, or when a disgruntled or former employee seeks the assistance of the FWO. While the FWO can make a determination in respect of such underpayments, this can also attract significant penalties.

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If FWO litigates in respect of an underpayment, a court may impose penalties of up to \$13,320 per contravention for an individual and \$66,600 per contravention for companies. For a 'serious contravention', the penalties are ten times these amounts.

FWO penalties can be up to \$66,600 per contravention for companies - and 10 times this for serious contraventions

If an underpayment is identified, this may have implications from the associated shortfalls in superannuation, workers compensation insurance and payroll tax.

Calculations for FEG

Clifton Hall has significant experience in determining employee entitlements. Our staff are skilled in calculating wages, allowances, leave entitlements and redundancy payments in most formal insolvency appointments.

In many appointments we are asked to verify entitlements for the Federal Government to enable advances to be made pursuant to the *Fair Entitlements Guarantee Act 2012* (FEG).

FEG was legislated to provide a 'safety net' for eligible employees to receive their entitlements (excluding superannuation) in the event an employer in liquidation or bankruptcy has insufficient funds to meet outstanding entitlements.

FEG is administered by the Attorney General's Department and our calculations are confirmed against the independent calculations of the FEG branch within the department.

All of our staff are therefore able to work on Payroll Compliance Reviews, enabling the right structure of staffing and costs to suit the assignment.

Specific engagements

Clifton Hall has been engaged in a variety of different Payroll Compliance Reviews, including:

- Confirmation of the entitlements of over 100 employees across a 5 year period as part of due diligence by one of Australia's 10 largest listed companies
- A review of a retail operation with 11 outlets to confirm suspected underpayments for their workforce of over 100 employees

- Engagement to review and reconcile wages outsourced to a payroll provider for 40 employees over a 3 year period, including checking ongoing wage payments.
- Formulating leave and redundancy entitlements for the controlled wind down of a business operation
- Calculation of alleged underpayments of overtime and overpayments of leave in a legal dispute with a former employee

How can we help?

Clifton Hall is able to assist with determining the potential underpayment of staff across all areas of their employment – whether wages, leave, allowances or termination payments.

Our engagement may be for a full recalculation over a number of years, or may initially be a verification of existing underpayment calculations to provide comfort to management.

Our calculations can be provided in a letter of findings or, if required, an expert's report. Our principals are experienced in giving evidence in respect of their work if required. Subject to the manner of engagement, our work may also fall under legal professional privilege.

While our work can be done on site with access to relevant documents, given the options available for remote working, we can also be engaged to carry out a review offsite. This can also help avoid complications around staff awareness until the full extent of any issue is known.

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