



The risks of underpaying employees

Reports of businesses underpaying their employees have been appearing in the media on a regular basis for many years now. The Fair Work Ombudsman's website has a new media release on an almost daily basis, detailing one organisation after another that has been prosecuted for underpaying its employees.



Because of the widespread practice of underpaying workers, the federal and state governments have been introducing changes to put a stop to this problem. Queensland and Victoria now have wage theft laws that can result in business owners and managers receiving heavy fines or even jail time for deliberate and serious underpayments of wages to workers. Other states are set to follow with similar legislation.

You may have also heard about the Closing Loopholes legislation regularly reported in the media recently. This legislation will change the Fair Work Act in a number of ways, including introducing a new wage theft offence (from January 2025) for employers who intentionally fail to pay wages or superannuation when they are due. These changes will result in Companies facing fines of up to \$7.8 million (or 3X the amount of the underpayment), and individuals, such as business owners and managers, will face up to 10 years in prison, or a fine of up to \$1.56 million (or 3X the amount of the underpayment).

So how can you ensure you are paying employees correctly?

It's fair to say, underpayment of wages is a big and common problem, including in the automotive industry. Employers who choose to take the risk of underpaying their staff, can face major penalties.

There are some important measures you can take to reduce the risk of underpaying your employees.

Know the Award that applies to your employees

Most employees working in the automotive industry are covered by the Vehicle Repair, Services and Retail Award 2020. This award covers employees such as tyre fitters, wheel aligners, motor mechanics, and store persons who are involved in vehicle repair and related services. You can't pay your employees correctly if you don't know the Award that applies to them.

Classify your employees

In order to pay employees correctly, you need to know the classification that applies to each of them. Most Awards, including the Vehicle Repair, Services and Retail Award 2020, require that employers advise each employee in writing of their classification.

In a pay dispute, an employee (or ex-employee) may argue that their classification is higher than what you believe it is. I've dealt with this situation on a number of occasions. If there is a back pay situation, the classification level will impact the amount of back pay that is due. For example, an ex-employee may argue they had a verbal agreement with a manager about their classification level, which is higher than their correct classification level. You can avoid this part of a dispute if you have thought about the classification levels that apply to each employee, and notified each employee, such as in their employment contract.

Every Award has a section describing each classification level.

Pay penalty rates, including overtime

There are many pay disputes about unpaid overtime, and also about penalty rates not being paid when they should have been paid. For example, under the Vehicle Repair, Services and Retail Award 2020, penalty rates apply to Saturday work – but you need to be clear on whether you are paying an employee for working Saturdays as part of their ordinary hours (e.g. as part of their 38 hours per week for a full-time employee), or as overtime.

Overtime applies to all hours worked above 38 hours. For example, under the Vehicle Repair, Services and Retail Award 2020, overtime worked on a Saturday is paid at 150% for the first 3 hours and at 200% for all subsequent hours.

An employee also needs to be paid overtime rates when they work more than their ordinary hours on a single day. For example, if a full-time employee normally finishes at 4pm on a Monday, but is required to work back for an hour, that extra hour needs to be paid as overtime (150%). Alternatively, but only by mutual agreement, the additional hour could be time in lieu.

Check your salaries

What is a salary? A salary is calculated as an annual amount paid to an employee on a weekly, fortnightly, or monthly basis. Under salaried arrangements, employees are paid the same amount in every pay period, until their pay is adjusted (such as through an annual pay increase). Salaries are usually all inclusive. Overtime payments and other allowances will not be paid as separate amounts (i.e. they are incorporated into the salary). For example, the salary takes into account that employees will work reasonable additional hours and will not be paid overtime for those additional hours.

Salaries are usually paid for more senior positions, such as for the managers in a business.

It's important to note that you can't pay an employee a salary that makes them worse off than what they would have been paid if they were paid all of the applicable Award entitlements. Some of the biggest wage theft cases have occurred where employers were paying salaries that resulted in employees being worse off than if they were paid all of the applicable penalty rates in an Award.

With the changes to legislation, it's more important than ever that you review how you are paying all of your employees, to ensure you have classified your employees correctly and that you are paying them correctly.

About John Girardi

John Girardi is a human resources consultant who runs Girardi Human Resources. He works with a number of employers in the automotive industry to provide outsourced human resource support, including providing Fair Work advice, drafting employment contracts, performance management, management training, and recruitment.



You can find out more about Girardi Human Resources here:
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