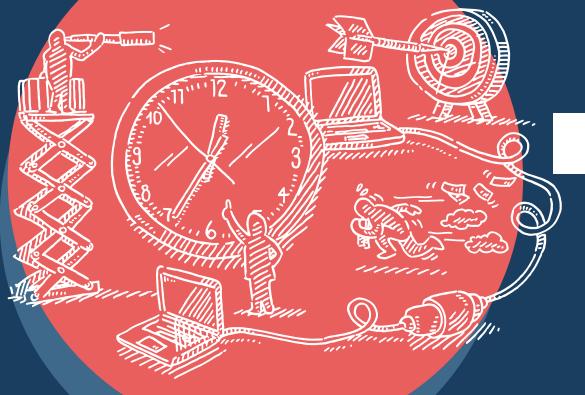




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DO I HAVE SOMETHING

TO WORRY ABOUT?

With a new headline each day implicating yet another high-profile business in serious underpayment, how many employers and workers in Australia are asking: 'Do I have something to worry about here?'

At the time of this whitepaper's launch, there is a storm growing in Australia over chronic wage underpayment. As much as \$1.35 billion in wages are underpaid each year in Australia according to PwC, impacting 13 percent of the Australian workforce.

So, the chances are that you do have something to worry about. But we're here to help with BULLSEYE: The definitive guide to underpayments and getting payroll right. In this whitepaper, we analyse the current underpayments crisis in Australia, what it means to you and your business, and provide step by step advice for avoiding, detecting, fixing and preventing underpayments.

Now that payroll has become an urgent financial and reputational risk, we share how employers and employees can manage this hazard without incurring even greater disruption and cost.

UNDERPAYMENTS

WHAT DOES

IT ALL MEAN?

What are *underpayments*? Underpayments (sometimes referred to as 'wage theft') is a term used to describe payments to one or more workers by a business that does not meet legislated requirements. Underpayments are generally 'systemic': they are ongoing, typically for long periods, and aren't often detected by an employee or business until an event – for example, an audit or a change of industrial award – reveals notable discrepancies.

WHY ARE UNDERPAYMENTS SUDDENLY BIG NEWS?

News of significant underpayments has come from every sector of the economy, and we are seeing a surprising range of high-profile organisations reporting underpayments and scrambling to implement wide-scale remediation.

Like a bushfire leaving bare scorched earth in its wake, in 2019 some of the country's largest employers and best-known brands like Woolworths, Rebel Sport and the ABC had sad histories of wage underpayment exposed to the world, alongside the usual suspects in hospitality, retail and agriculture.

The first question has been how do well-resourced enterprises – with approved enterprise agreements, solid union presence, modern payroll systems, internal expertise and regular financial audits – embed mistakes in the systems for years without detection and neglect to pay millions of dollars in legal, enforceable entitlements?

The answer throws up a host of possible causes, including payroll systems not fit-for-purpose, poorly trained payroll staff, inaccurate annualised payments, enterprise agreements that don't pass the equity test, the complexity of the awards, the difficult of interpreting tax and employment legislation, and in the rare few cases – outright dishonesty. We have only begun to see the impact of these revelations on the fundamental integrity and equity of our industrial relations system.

As the Australian population waits to see what their political leaders are willing to do to restore trust, employers are becoming concerned about their ability to avoid underpayments altogether.

Are underpayments a big issue? The *Fair Work Ombudsman's Annual Report* has revealed that \$40 million in stolen or lost wages was recovered for 18,000 workers in the year to June 30, 2019².

IR IN AUSTRALIA

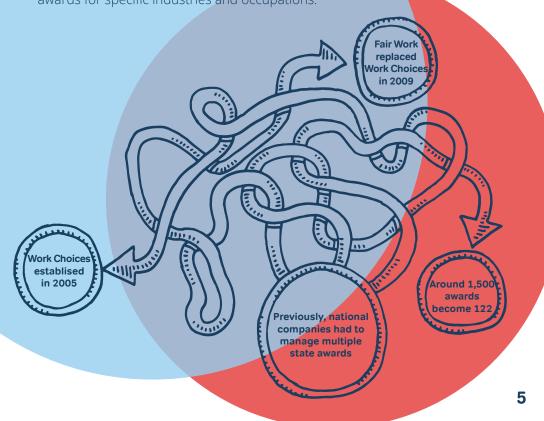
The complexity of Australia's system of awards and agreements with a range of different loadings and rates, and multiple clauses for different grades and types of employees, has been cited by many employers as the main reason for the high level of underpayments witnessed in recent years.

Even if employers have simplified their payroll through Enterprise Bargaining Agreements (EBAs) and annualised salaries, they still need to ensure their staff are paid correctly by applying the current industrial relations rules and policies.

HOW COMPLEX IS AUSTRALIA'S IR?

- Australia used to have a web of federal and state laws and tribunals. For a company operating nationwide, it meant workers in different states could be covered by different awards with varying pay rates and conditions.
- + In 2005 the Coalition government introduced the Work Choices Act and implemented a new national workplace relations system.
- + In 2009 the Labor government replaced Work Choices with the Fair Work Act but kept the national system.

+ About 1,500 federal and state awards have now been refined down to 122 federal awards for specific industries and occupations.



IR IN AUSTRALIA CONT.

Enterprise agreements were intended to ensure no-one was worse off than under an award, which still apply to salaried staff by setting a minimum pay rate. Aiming for award equity in these EBAs has created its own complexity, and created a financial tightrope for employers to walk, where any errors could multiply into massive repayments – with interest and tax.

Salary annualisation sees overtime, penalty rates and other obligations estimated annually rather than recorded on a week-by-week basis, which appeal to employers because it requires less administration. For employees, the purported benefit is knowing what they'll earn ahead of time. But ensuring annualised salary arrangements are airtight from a legal perspective is tricky.

If salaried staff work more hours overall – and more hours covered by a penalty rate – then the award mandated, they have grounds for wage recovery. Without reconciliations ensuring that hours are matching pay, this problem balloons out over time.



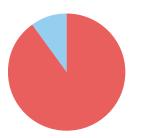
UNDERPAYMENTS FOR PAYROLL PROFESSIONALS

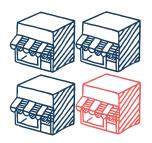
Beyond deliberate wage theft, many underpayments are happening because payroll managers are misinterpreting the requirements of the various legislation, awards, agreements, regulations and contracts governing each employee.

Of the respondents to Deloitte's 2018 Payroll Operations Survey³, 35 percent indicated the accuracy of withholding calculations for regular or supplemental pay is their greatest challenge.

Most businesses are not doing this on purpose, with many of these errors being caused by accident or having outdated information in their systems, exacerbated by the often-inadequate training given to payroll managers. Many payroll managers in Australia learn how to operate a system on an ad-hoc basis with their colleagues, or through initial supplier training, rather than formal training in payroll as a discipline.

IN THE 2019 AUSTRALIAN PAYROLL ASSOCIATION SURVEY OF 520 PAYROLL MANAGERS:





90% found interpreting legislation or awards confusing or contradictory

1 In 4
SMEs seek government
advice whereas 6% in
large businesses seek
government advice

Despite the fact that most organisations don't tend to have dedicated payroll staff until they pass the 100-employee mark, those people with responsibility for payroll, whether they're payroll specialists or not, tend to be well educated and experienced professionals, with a direct report to c-suite.

The current underpayments crisis is a solid justification for increased training expenditure in payroll, and for Australian payroll managers to require certification and professional oversight (more like accountants). It's almost impossible to accurately interpret and stay up to date with legislation and regulations without ongoing training for payroll staff, and it's even more problematic for those without payroll specialists.

PAYROLL SYSTEMS

AND GOVERNANCE

Some businesses have underestimated the risks in workplace relations compliance and underinvested in their systems and governance.

The Head of the Association of Payroll Specialists Jason Low, commented on the causes of underpayment⁵: "Unfortunately, payroll is not a profit centre, it's a cost centre – all we do is spend money and organisations have looked at ways on how to minimise that."

There's a temptation to rely on software too much if staff with responsibility for payroll are busy and overwhelmed, and don't have capacity for a hands-on audit. When actual hours worked deviate from the roster and aren't recorded, a manual process doesn't always pick up when entitlements are being infringed, especially with outdated payroll systems.



"And if you look at the cost of the clean-up versus what the cost would have been of investing at the beginning, it's very clear that if you actually thought of payroll or legal etc. not as a cost centre, you wouldn't have these problems."

Michael Gonski

Herbert Smith Freehills principal

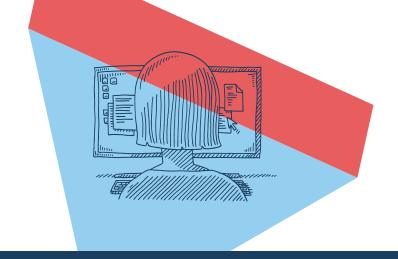
SOFTWARE UPDATES

Current and historic underpayments are often discovered during a software upgrade. Payroll systems are an essential element of compliance because it effectively converts written legislation and regulations into system code – automation that restricts the capacity for mistakes.

For organisations covered by enterprise agreements or other specific workplace instruments, applying new rules and rates is a coding nightmare, so many organisations find it more cost effective to outsource and replace the payroll system entirely rather than upgrade.

On the other end, unavoidable compliance obligations like the Australian Tax Office's Single Touch Payroll (STP) put pressure on enterprises to keep their system up to date. Given the complex compliance environment in Australia, businesses are wise to take extra care when selecting suppliers.

"Make sure you're partnering with a supplier who can support you both now, and in the future", says Reianna Vercoe, Product and Marketing Manager for Aurion and a 15-year veteran of the payroll software industry.



"Your payroll software supplier should be an active part of your compliance – they get much more notice than you about changes to legislation and regulations, and should have insights that make staying compliant as easy as possible."

Aurion Product & Marketing Manager, Reianna Vercoe

"When selecting a supplier, first look for local expertise and timely delivery of compliance changes. It should be at a low-cost for the life of your relationship. Do they support you to implement major changes, including training and integration of new software and services? Ask about their experience with significant changes in how payroll is delivered, like single-touch-payroll or 24/7 mobile support – which are both total payroll necessities.

"Suppliers should be able to demonstrate their capability to deliver solid solutions," said Vercoe. "Look for things like free upgrades for major compliance and technology changes, and their support options for different stages of your business journey. The average customer keeps their payroll solution for over seven years – our longest customer relationship is over 30 years now. You need a reliable partner for the long term".

UNDERPAYMENTS

FOR BUSINESS

Correct wage payment is a complex undertaking, and there's much at stake. Payroll is the central pillar in the employeremployee relationship, and underpayment restitution is often complex and expensive.

There's far more than money at risk. The potential damage to organisational reputation and morale – regardless of whether an underpayment was accidental – can far outweigh any financial penalty. A revelation of significant underpayment can undermine business development and recruitment prospects, and more widely harm the expectations and support give to legitimate businesses by investors, employees, the community and regulators.

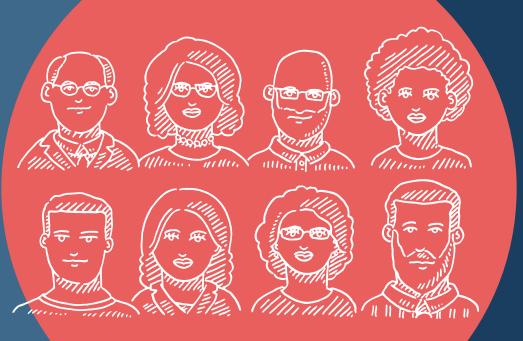


"If companies do not prioritise workplace compliance from the outset, it can take significant resources and time to fix, particularly where companies do not have accurate records of times worked and wages paid."⁷

Sandra Parker

Fair Work Ombudsman

To the broader economy, wage minimisation, underpayments and wage theft have significant effects. It reduces consumer demand by repressing spending power and restricts competition by giving organisations that break the law an advantage over those that comply with the rules – and an incentive to break the law themselves.



WHO'S RESPONSIBLE,

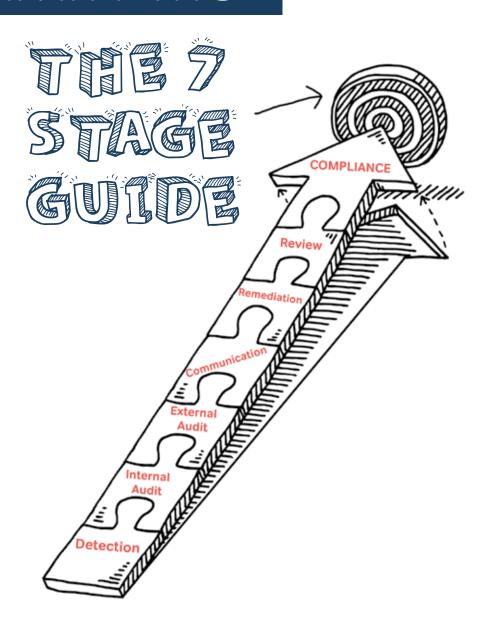
AND DOES IT MATTER?

In a situation where blame can be distributed or diverted around a company structure, prosecutions won't necessarily return money to those who earned it or solve the underlying issues. Practical action is needed.

Those at the front line of wage payments, payroll workers and managers, also have their own ethical minefield to navigate. HR and payroll managers are obliged to tell their employer if they're transgressing but they are also their employee and want to maintain their trust. If they have tried their best to change the practices, and senior management reject their observation, are they complicit if they take no further action?



MANAGING UNDERPAYMENTS



STREET

DETECTION

Regular review of your payroll function is critical to avoidance and early detection of underpayment risks.

Regular review of your payroll function is critical to avoidance and early detection of underpayment risks. Underpayments are detected in one of four ways:

- 1. Internal wage payment audit this should be a regular, scheduled activity; if not, at minimum a wage audit should be done anytime there is a change to the awards or agreements impacting your workforce.

 Please note: a wage audit is not a 'general business' audit, which will normally not be thorough enough to detect payroll discrepancies.
- **2. Change in award or agreement** a review of the changes may uncover entitlements that have been inaccurately calculated.
- 3. Change in payroll team members, processes or systems often when you start doing things in a different way, you get a different outcome. When that happens, you'll need to check which outcome is actually correct, and whether you've been doing it wrong all along. An example of this would be parallel pay-run testing when implementing a new payroll system.
- **4. Instigated by an employee** if an employee thinks there is a problem with their entitlements, they may raise it directly with their employer, their union, or the Fair Work Ombudsman.

By far the easiest way to manage underpayments is to avoid them altogether. Using software that automatically calculates entitlements against the relevant award will save you a lot of pain. Many reputable rostering and workforce management tools do this at price points accessible for any business (ask us for a recommendation!).



DETECTION CONT.

To detect underpayments before or after they have become a risk:

- 1. Regularly perform a wage audit compare what you actually pay your employees against the relevant legislated entitlements that you should be paying. This applies to all employees, regardless of whether they are on an agreed salary, or other agreement or award that hasn't changed. If you're unsure which entitlements apply to your employees, you can check with the Fair Work Ombudsman via their website or phone, anonymously if you prefer. Keep in mind this common mistake: even if you have a private arrangement with your employee to pay a specific rate, you cannot pay them less than their legal entitlement without penalty, and the only way to know this is to check regularly.
- 2. Perform additional audit tasks when employee conditions change these events should all trigger a review of complete employee entitlements minimum wages increase, birthdays, changes of duties, or changes to qualifications to ensure you are paying everything you have to.
- 3. Have easy and clear methods for your employees to communicate suspected issues with you not only will this help you to detect issues early, it also builds employee-employer trust and minimises any ill-will that may have been caused. Provide easy options for your staff to communicate with you, and make sure you reply to their enquiries quickly, transparently and accurately.

- 4. Keep track of changes that impact pay entitlements subscribe to industry forums, associations, government agencies and thought-leadership channels that keep up to date with changes that could impact your business. The Fair Work Commission and the Australian Taxation Office both regularly communicate and notify of payroll-impacting changes. You can also subscribe to our Aurion website for regular compliance updates.
- 5. Where an applicable award or agreement has changed, retrain your team and change your processes if required a change to payroll entitlements should immediately trigger a review of your end-to-end payroll function to ensure that any impacted processes are identified, and a thorough review of the applicable legislation is conducted.
- **6.** Train your payroll staff and retrain them regularly make sure that everyone understands how entitlements should be correctly calculated; they receive regular updates about relevant payroll changes from industry groups or bodies; and are a member of a payroll industry group, if possible.
- 7. Check your compliance with timeframes you may be paying correctly, but are you paying on time? Keep in mind that underpayments can still happen as a result of late payment, particularly for entitlements like superannuation.

HOW TO DELIVER THE NEWS

Nobody likes to be the bearer of bad news, especially if it's their responsibility. Delivering bad news, potentially to very senior members of your business or your boss, is always a scary situation. Even if you have very good relationships with your stakeholders, there are going to be some situations you probably feel uncomfortable with.

If you've discovered evidence of underpayments, you should prepare your evidence and speak to your direct manager to form a strategy as soon as possible. Speak factually, present your evidence and be prepared to answer any questions. Do not attempt to cover anything up, as it will likely become an issue later.

If possible, present solutions alongside the issue. Presenting solutions is always a better option. Discuss with stakeholders the specific steps you have already taken and express your ideas for getting fruitful results.

STRGE 2

INTERNAL AUDIT

If you uncover evidence of potential underpayment, or suspect an issue, you should immediately commence a wage audit spanning the last 12 months of employee entitlements and expand the audit if underpayment issues are identified.

To conduct a wage audit, you should first identify employees that are high-risk for underpayments within your business. These are typically employees who are paid under an award, or an agreement which must match or better the conditions of an award, and who are undertaking work that would qualify them for additional payments under the awards rules. Make sure your audit includes employees from multiple classifications – from casual through to full-time.

Please note – even if you have done a Better Off Overall Test (commonly known as a BOOT) at some point when setting an agreement for your workforce, you need to continually audit it for fairness against the relevant legislation.

A wage audit should analyse the records of your selected employees, period by period, against legislated entitlements (you can confirm the correct legislated entitlements at the Fair Work Commission website). For each pay period, you should compare the pay outcome achieved with the pay outcome that should have been achieved if using the correct legislative instrument.

The FWO has a great pay calculator that can assist you work out base pay rates, allowances and penalty rates (including overtime): https://calculate.fairwork.gov.au/findyouraward

Sounds difficult and time-consuming? It is. Where possible, seek confidential external assistance. All major auditing firms (think Deloitte or PwC) offer payroll auditing services. Additionally, you may be able to engage an external payroll auditor or accountant – but be sure to check their credentials and capability to audit payroll before engagement. Finally, payroll vendors (such as Aurion)offer payroll health-check services – check with your vendor or get in contact with Aurion.

Alternatively, if you don't know what to do but want to do the right thing, you should voluntarily contact the FWC for assistance. It is a better outcome to self-report an issue than have one discovered externally, it may even work in your favour.

Wage audit checklist Some types of payment are more prone to miscalculation than others:

- + Overtime payments
- + Allowances
- + Termination payments
- + Superannuation
- + Leave payments and rates
- + Incentive payments.

STRUE 5

EXTERNAL AUDIT

If you've concluded that it's likely you have underpaid staff, but are not sure of the extent of the underpayments and need help, it's time to engage with external agencies to:

- + confirm that you have underpaid staff
- measure and calculate the underpayment extent
- + put in place a remediation plan.

Organisations either auditing payroll or making restitutions are dealing with incredible complexity. Underpayments are calculated retrospectively, with interest, for the period of non-compliance. In your internal audit, you will have calculated how much you have underpaid impacted employees; an external audit is an opportunity to validate these amounts with an external auditor or agency. This process will also identify if you need to pay interest and over what period, and if there is any penalty payable (typically a 'contrition payment' to the FWC).

If you don't need help to make remediations – for example, you've calculated exactly how much you have underpaid and are confident that you can remediate the underpayments legally to the satisfaction of the impacted employee/s without assistance – you can jump to Stage 5.

Before self-reporting to an external auditor, the Fair Work Commission provides a range of great checklists. Additionally, the FWC themselves can assist you with an audit.

To prepare for an external audit, compile all records you have available detailing the underpayment issues and your calculations. These both assist the auditor and prove that you have proactively sought to address the issues. Additionally, the FWC has a 'reverse onus of proof' policy that means employers with deficient records must disprove allegations of underpayment of employees. Changes to the law in late 2017 mean absent reliable records, a business must disprove an employee's account of hours worked and hourly rates of pay, making the remediation process significantly more difficult.



COMMUNICATING

UNDERPAYMENT

ISSUES

Underpayments are damaging for more than financial reasons. Underpaying employees damages the productivity of your business and your workforce and can substantially reduce trust between employer and employee. Communicating underpayment issues effectively is key to surviving an underpayments issue with your workforce and brand value intact.

Where you have identified underpayment issues, transparency is key. You should take clear, decisive action to minimise both internal and external damage.

- 1. Inform your senior leadership (if they don't already know) make sure that everyone is up-to-speed with the issues and proposed remediation plan so that they can manage their teams effectively.
- 2. Work with your HR and/or Employee Experience team to communicate well-crafted and timely messages that clearly articulate the issues, your contrition and plans to speedily remediate take expertise to put together, so consult with the experts.
- 3. Communicate with the entire business, not just impacted employees no one likes to be in the dark. Underpayment issues are reputational issues, not just financial ones, so all employees need reassurance of your proactivity.
- **4.** Communicate with the wider market where you have systemically underpaid all (or a lot) of your employees, release a public statement admitting the issues and your intent to remediate before someone else breaks the news. Underpayments are big news, and a perceived failure to own your responsibilities can cause irreparable brand damage.
- **5.** Continue communicating until the issues are fully remediated communicate your progress and key metrics as you sort everything out. It shows that you're taking it seriously, and that remediation is important to your business.
- **6. Provide clear channels for employees to communicate with you** identify whom employees can contact if they have questions or concerns and ensure that this person or team has the support and resources to respond effectively.

It should go without saying, but the worst option is to try and hide your misdemeanour or lie about the extent of it or your actions. You will eventually be found out, and it can undo your broader remediation efforts.



REMEDIATION OF

UNDERPAYMENTS

Beyond the finger pointing and the massive cost and complexity of remediation, the issue of underpayment requires individual action from every employee and employer to ensure legal entitlements are being met.

Underpaid employees must be back-paid as soon as possible. This can be done as part of the normal pay cycle or as a separate payment. The back-payment must be recorded in the employee's pay records. If you can't afford to pay in one lump sum, a payment plan can be negotiated between the employer and the employee to pay the full amount over a period of a few weeks or months. The agreed payment plan should be written down and signed by the employer and the employee. The employer and employee should each keep a signed copy.

Additionally, employees will need to seek advice (or their employer can assist them to find advice) about their individual taxation circumstances at the time the underpayments occurred. Every company is dealing with separate issues, and every employee is in a unique position.

SUPPORTING EMPLOYEES DURING REMEDIATION

While getting a lump-sum back-payment might seem like a boon to employees, it can come with unexpected complications. Lump-sum payments affect an employee's reportable income and taxation, sometimes negatively. While it's possible for an employee to negotiate a tax offset from the ATO if they're at a disadvantage, this can be a complicated process and is very difficult for an employee to do unassisted.

Employees are ultimately responsible for their own tax affairs, but it's better for your employer-employee relationship to provide support if you can – particularly if many employees are impacted. Services such as employee assistance programs (EAP) and tax planning providers such as YOUtax, a specialist in remediation payment tax planning, can be invaluable to rebuilding trust.

"Providing access to Australian tax professionals who can give advice based on each individual's own unique circumstance is critical. Tax planning provides the opportunity for individuals to be prepared for how a remediation payment will affect them at the end of the financial year. Done early enough, it gives those impacted time to contact organisations like Centrelink, Child Support and even their Superannuation fund to adjust estimated income levels or contributions, and generally ensure that the remediation process for employees is as smooth as possible."

YOUtax Director / Accountant, Emma Baxter



REVIEW

You have finally paid everyone, and your brand and workforce are still intact. Now, while your memory is fresh, is the time to learn from what happened and use the lessons to enhance your payroll function and business.

After your underpayments remediation is completed, you should conduct a thorough review to determine the cause, implement changes to processes or systems that may have contributed to the issue, and undertake other corrective actions.

After remediation, ask the following questions:

- 1. What can be learned from what happened?
- 2. How do you avoid repeating mistakes?
- 3. How do you assess what is and is not working?
- 4. What are the implications of what just happened not only on you, but on your whole corporation or industry?
- 5. Are people, process or system changes needed?

In addition to mitigating future underpayment risks and de-risking the payroll function, a review that covers people, processes and technology will generally produce cost savings and minimise other risks associated with payroll – for example, security or audit risks.

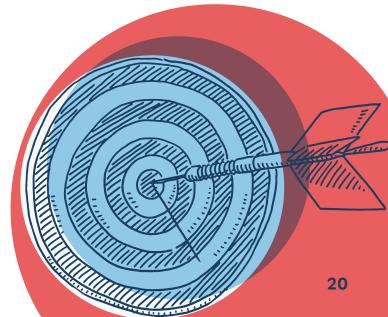
Your review doesn't need to be a big exercise – it depends on the scale of your business and the issue. But at a minimum, you should take the time to reflect, write everything down, and make any immediate changes to ensure you avoid repeats.

ONGOING COMPLIANCE (THE GOAL!)

Keeping your payroll compliant requires constant vigilance. After you've remediated any underpayment issues, you should implement any corrective actions identified in your post-incident review and continually perform wage audits – ideally audits can be regularly scheduled, or at the very least performed when entitlements change.

If it's a challenge keeping full-time payroll experts in your business trained and up to date with legislative changes, you should definitely consider outsourcing your payroll to avoid the risk of underpayment. Outsourced payroll is becoming increasingly popular across the entire business spectrum – for those who usually have their own in-house payroll service, in the mid and small-market, and for those who want the extra level of reassurance and responsibility.

If you are managing your own payroll, make sure to use all information available to support your compliance. The FWC provide multiple tools for reviewing compliance, for free, and provide phone and email support for small businesses as a priority. Additionally, liaise with your payroll system or service provider regularly to ensure that you are both keeping up to date with requirements.



RESOURCES

Fair Work Commission

- + How to fix an underpayment: https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/how-to-fix-an-underpayment
- + Pay Calculator: https://calculate.fairwork.gov.au/findyouraward

Payroll Industry Associations

- + Australian Payroll Association (APA): https://www.austpayroll.com.au/
- + The Association of Payroll Specialists (TAPS): https://payroll.com.au/

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