



› With nearly 30 per cent of the global workforce predicted to be working remotely multiple days a week by 2021, there will be added challenges in ensuring employees are paid correctly.

› However, complexity around awards and enterprise agreements is the greatest challenge in keeping up-to-date with how people work and should be paid.

› Australia's Fair Work Commission has made it compulsory for employers of staff on an annualised salary agreement to keep records of starting and finishing times, and unpaid breaks taken.

STORY HELEN HAWKES

BACK TO THE FUTURE FOR FAIR PAY

AS COMPANIES STRIVE TO ADDRESS STAFF UNDERPAYMENT, THE RETURN TO THE HUMBLE TIMESHEET COULD BE AN EASY SOLUTION, BUT ARE THE EMPLOYEES OF THE DIGITAL AGE HAPPY TO CLOCK ON AGAIN?

In workplaces of old, most employees were issued with a timecard they inserted into a Bundy clock, which clocked them in and out of their shift.

Today, with companies from the Australian Broadcasting Corporation to Woolworths Group and Coles Group having been caught up in wage underpayment claims, anecdotal evidence suggests biometric clocks that feature a sensor or a facial recognition system are on the way back for white-collar workers, once most of us return to the office. In fact, Coles Group is already having its managers clock on and off, after discovering that staff were owed A\$20 million in overtime.

Even for employers who felt they were across payroll issues, the need for more employees to work from home during the pandemic has also introduced fresh challenges in accurately monitoring hours.

Even clocking start and end times, as well as unpaid breaks, may not reflect workers who log off to complete a personal or family task, and then log back on, says Rohan Geddes, partner, payroll consulting at PwC Australia.

Geddes believes all employers need to have better visibility over working times to enable employees to be paid correctly. Simply put, he says businesses can no longer treat payroll as “set and forget”.

SIGNIFICANT COMPLEXITIES CAUSE TROUBLE

While 54 per cent of Australians spent at least some time working remotely before COVID-19, Global Workplace Analytics predicts that 25-30 per cent of employees globally will be working from home multiple days a week by the end of 2021.

Experts agree telecommuting will present additional challenges in monitoring hours, but say it is significant complexity around awards and enterprise agreements that continues to present the most serious challenges in keeping up-to-date with how people work and, consequently, how they should be paid.

One small step towards rectifying this in Australia came in March this year, when the Fair Work Commission (FWC) made it compulsory for employers of salaried staff subject to an annualised salary arrangement under an award to keep a record of starting and finishing times and unpaid breaks taken.

The move followed numerous underpayment scandals that were referred to as “endemic” to corporate Australia, and requiring “a full-court press” across government policy, according to Attorney-General Christian Porter.

In addition to increasing civil penalties for wage underpayment ten-fold, the government is working towards instituting a category of clear criminal offence that deals with “the worst types of systemic, large, knowledgeable underpayment by companies”.



RECORD-KEEPING
UNDER THE NEW
ANNUAL WAGE
AGREEMENTS

Employers must record the arrangement in writing and include:

- The annual wage that will be paid, and how it has been calculated
- Which award entitlements are being included
- The maximum number of penalty hours and overtime hours that can be worked in a pay period without extra payment

The employer must record:

- Starting and finishing times
- Unpaid breaks taken

Employers must also undertake a reconciliation of their employees' annual wages every 12 months.

While the commission's recommendations go a long way towards increased vigilance around payroll compliance (see breakout, left), annualised salaries are just one part of the remuneration puzzle, says Mark Curran, principal lawyer at global legal firm DWF Australia.

There are 120 modern employment awards in total covering Australian workers, including 22 that cover banking, finance and insurance, mining, legal services, telecommunications and more, that currently contain an annualised salary arrangement clause.

Curran says all employers are challenged by the complexity of provisions across all awards and enterprise agreements, and the amount of record-keeping required to stay firmly within the law. He believes it is ambiguities in the implementation of the law that trip up many, rather than a deliberate flouting of the law.

Geddes agrees: "While the industrial relations framework has been simplified, complexity is still a hallmark."

He gives the example of a recent client who, under one employment clause, found they had to pay an employee eight times their base salary if the employee worked outdoors, in the rain, on a Sunday that was part of a public holiday. In addition, this agreement had to be configured into the payroll system.

LONG HOURS THAT DON'T
NECESSARILY ADD UP

Other businesses in Australia that have recently admitted to wage underpayment include the Super Retail Group, Commonwealth Bank, Bunnings Group, Qantas, Rockpool Dining Group, Sunglass Hut, 7-Eleven and George Calombaris's hospitality company, MAde Establishment Group.

Geddes adds that countries including Japan, the Philippines and New Zealand are also struggling with issues surrounding underpayment.

In December last year, Seven-Eleven Japan Co. disclosed that it had withheld ¥490 million (about AS\$6.9 million) in overtime payments to more than 30,000 part-time workers since 2012.

In July 2019, the Philippines Supreme Court ordered Kentex Manufacturing Corporation to pay ₱1.44 million (about A\$42,000) to 57 workers found to have been underpaid.

In New Zealand, the NZ Police, district health boards and Restaurant Brands Ltd's KFC, Carl's Jr, Pizza Hut and previously owned Starbucks have all been affected by underpayment issues.

Geddes explains that even small issues in payroll, in time or attendance recording, when extrapolated over a large workforce over many years, can add up to significant exposures.

"The declining presence of unions also means fewer early warnings of concerns in relation to how an employee is being paid," he says.

"What we are seeing now coming in to replace this union presence is the media as a watchdog."

In December 2019, the Woolworths Group hit the headlines in Australia for all the wrong reasons.

Canberra-based legal firm Adero Law filed a class action in the Federal Court alleging "underpayment and systemic wage theft" on behalf of more than 7000 current and former salaried employees.

The action was launched by a former night-fill manager, and is now a class action on behalf of thousands of other workers.

Adero Law alleges underpayment by the Woolworths Group amounts to about A\$620 million, an allegation the organisation has disputed, as well as saying it believes the class action proceedings are without merit.

In February this year, Brad Banducci, Woolworths Group managing director, said the company had analysed almost 80 million time, attendance and rostering records of salaried store team members, and reassured the public and shareholders that the company is committed to rectifying any matters as soon as possible.

As employers such as the Woolworths Group have found, salaried arrangements can unravel if there is no continuous auditing of each salaried employee's timesheet against each and every underlying award



entitlement, says Peter J. Richards, Brisbane-based workplace consultant and former senior deputy president of the Australian Industrial Relations Commission and FWC.

"The salaried system needs to be simplified and globalised in its assessment of exchanges, and include scope for reasonable tolerances, noting the FWC orders don't make any mention of employees' obligations when they are overpaid," he says.

AVOIDING AN UNDERPAYMENT SCANDAL

To avoid penalties and reputational damage, businesses need to seek advice on how to interpret awards through professional or legal advisers, says Curran.

In addition, companies can use data visualisation capacities to look at their workforce in detail, and explore information that comes through payroll, says Geddes.

Apps such as Asana or Trello can also provide accountability and transparency to the wider team on what others are working on, especially for businesses that encourage telecommuting.

Karen Gately, founder of advisory, organisational, leadership and team development company Corporate Dojo, believes that great relationships with people are at the heart of the ability of a business to monitor and report on levels of productivity.

"Even in an office environment, it is not possible to watch how many minutes, or hours, people are being productive," she says. "Employers are relying on staff to get into a database and enter their hours and add any relevant notes."

Besides demonstrating integrity, staff need to be well-trained in the record-keeping systems in place, and employers need to make the fundamentals – such as a good system with checks and balances – a baseline priority, says Gately, who has worked with companies including HP and Toyota.

These may include the new version of the bundy clock, mobile phone apps that track time, or electronic check-in, she says.

Gately adds that optimal work hours for those in a professional role are the hours it takes to deliver on the role within reasonable boundaries that also enable them to maintain health and balance.

"If someone is working 70 hours a week, and is tired and burnt out, they are not going to be impactful," she says. "Every working arrangement should be based on mutual trust and respect." ■

"IF SOMEONE IS WORKING 70 HOURS A WEEK, AND IS TIRED AND BURNT OUT, THEY ARE NOT GOING TO BE IMPACTFUL. EVERY WORKING ARRANGEMENT SHOULD BE BASED ON MUTUAL TRUST AND RESPECT."

KAREN GATELY, CORPORATE DOJO

QUESTIONS
EMPLOYERS
SHOULD BE
ASKING

01.

When was the last time we commissioned an external review of our payroll codes and configuration of our payroll system to ensure it is aligned with our underlying awards/enterprise agreements, and that super guarantee (SG) is calculated correctly?

02.

If we pay our employees an annualised salary, have we confirmed that this is (a) allowed under our award, and (b) appropriate given their minimum terms and conditions of employment?

03.

Do we regularly test that employees receiving an annualised salary are being paid at least what they would be paid if their entitlements were calculated based on the relevant award?

04.

Do we use an electronic time and attendance system to capture non-rostered hours?

05.

What manual interventions are required by our payroll function to ensure that our employees are paid correctly?

06.

How does our payroll department keep up with its professional development?

Source: PwC

07.

Have we received employee complaints in our organisation about our payroll's accuracy?

08.

How often are we required to run back pay adjustments or to make disclosures to the tax authorities?

09.

What is the capital and training cost associated with upgrading capture systems for various business sectors?

