



## Underpayment of wages. Are you being paid correctly?

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At Andersons, we often initially assist a client with a particular employment issue they are facing in the workplace and during this process we will query the amount they are being paid to ensure that they are receiving their full entitlements. More often than you'd imagine, they're being under paid.

The Fair Work Commission ("**FWC**") is responsible for reviewing the national minimum wage which is conducted by the FWC's Expert Panel as part of the Annual wage review process. From 1 July 2014, the national minimum wages for employees 21 years and over is \$16.87 per hour or \$21.08 for casual employees.

There are also the basic minimum standards that are outlined in the [National Employment Standards](#) ("**NES**") of the *Fair Work Act 2009* which apply to all employees who are working for employers other than local government or state employees. Such conditions relating to a payment include:

- Annual leave
- Personal/carers leave

- Long service leave
- Payment for Notice of termination
- Public holidays
- Severance/Redundancy pay

In addition, you may be entitled to a higher minimum wage pursuant to a Modern Award if you work in a particular industry to which a Modern Award applies or if you are covered by an Enterprise Bargaining Agreement ("**EBA**"). Depending on the industry you work in, there is a variety of conditions and entitlements in addition to the basic conditions provided in the National Employment Standards which all accommodate the needs and peculiarities of each industry. Many of the unique clauses in the above Modern Awards stem from historical customs of the particular industry.

Some examples of differences within various awards include:

- Annual leave loading of 17.5% applies to various industries including retail, hospitality, childcare, banking and finance and a variety of other Modern Awards.
- In the *Children's Services Award 2010* an employer must pay superannuation in additional circumstances. For example if an employee is absent from work due to a work related injury and is receiving worker's compensation, the employer is required to pay superannuation to employees in this industry on top of worker's compensation payments. This is not the case for the majority of industries.
- In the *Plumbing and Fire Sprinklers Award 2010* - a redundancy amount is paid in all circumstances at the termination of employment with the only exceptions being "misconduct" or "refusal of duty". Generally speaking, in most other industries a redundancy amount is only payable if a position has been made "genuinely redundant" meaning the employer no longer requires the position to be performed by the employee. The plumbing industry provides a broader definition.
- In the *Building and Construction General On-site Award* various allowances are included for a variety of conditions encountered in the industry including (but not limited to) industry allowance, special allowance, underground allowance, multistory allowance, laser operation allowance, tool allowance and meal allowance.

It is important to keep in mind that many of the allowances/loadings mentioned above may already be included in the "above award" hourly rate but only if this is specifically outlined in your employment contract or a Modern Award or an EBA. In addition, any above award amount must cover your minimum wage under the award as well as the additional allowances applicable to your working environment. It is possible for an employer to "off-set" payments in some situations but this is only if this has been specified in the contract or award.

A Monetary summons can be lodged in either the Fair Work Division of the Federal Circuit Court or the State Industrial Relations Court in order to recover any underpaid amounts from your employer. If you believe you have been underpaid, you have six years from the date the money is due and payable to you in order to lodge proceedings in either court.

In addition, if there have been 'breaches' of the *Fair Work Act* or National Employment Standards which are civil penalty provisions, your employer may be fined and required to pay penalties for breaches of the Act.

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