



FEATURED | WAGES

Three tips on not falling foul of the Fair Work Ombudsman



Compliance concept with icons and text. Regulations, law, standards, requirements, audit diagram on virtual screen.

Tammy Tansley
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It seems like almost every week there is an example of a business falling foul of the Fair Work Ombudsman (FWO) for underpayment of wages. Many of these businesses are small businesses or franchises.

According to the FWO, it has recovered more than \$1.2 million for 1351 workers in the fast food, restaurant, café and retail sectors, for underpayments prior to COVID-19. Inspectors found 84 per cent of businesses investigated in Melbourne's popular food precincts and 88 per cent of those in Brisbane's weren't complying with workplace laws.

Which begs the question, leaving aside those that are wilfully underpaying as a commercial advantage; why are so many small businesses getting it wrong? And more importantly – how can you get it right?

Tip 1 – It's complicated

Tip 1 is to acknowledge that the employment framework in Australia is complicated. Big businesses have specialist HR and payroll departments, and still get it wrong. So, it's no surprise that micro-businesses and smaller businesses, who don't have access to these resources, struggle to know where to start.

Tip 2 – Understand the basics

Employment conditions for most employees are governed by the *Fair Work Act* – a Federal act that governs much of how the employment relationship in Australia works. Once you've confirmed that your business is covered by this Act, you can then work out whether there's a modern award applies, or whether the employee is "award-free" (ie- not covered by a modern award). As a tip -if your business is a pty ltd, it's covered by the Act.

You can't contract out of the award. So if one applies, that's the minimum you need to pay, and the conditions you need to observe. If there's no award that applies, the minimum is the National Employment Standards – ten entitlements that apply to all employees. There may also be an enterprise agreement that applies to your specific business.

Separate again to the award and the National Employment Standards is a common law contract of employment. You can have one of these whether someone is covered by a modern award or not.

All of these instruments interact with each other, providing the structure for what an employee is paid, and any other applicable terms and conditions of employment.

Other key things to understand

Two other key elements to understand before working out what applies are:

- Whether your worker is an employee or a contractor.
- And if they are an employee, whether they are permanent (employed on an ongoing basis on a full-time or part-time basis) or casual (employed on an irregular basis).

Tip 3 – Look for the resources that are available

The good news is that there is plenty of good, free advice available. The best place to start is the Fair Work Ombudsman [website](#). This website is laden with information on what award to pay an employee, and what penalties and allowances apply. If it's not clear which award applies (which it's often not), their helpline is actually just that, helpful.

Once you've worked out which award applies, there are templates for contracts of employment, and all sorts of common employment-related issues. There's a tool that allows you to work out what hourly rate applies, depending on the age, classification and shifts an employee might be working.

This is an area where it pays to spend a bit of time getting it right. And if you're worried it's not right, or you're just not sure; it's worth asking the question.

Tammy Tansley, Owner and Principal, Tammy Tansley Leadership and Workplace Culture

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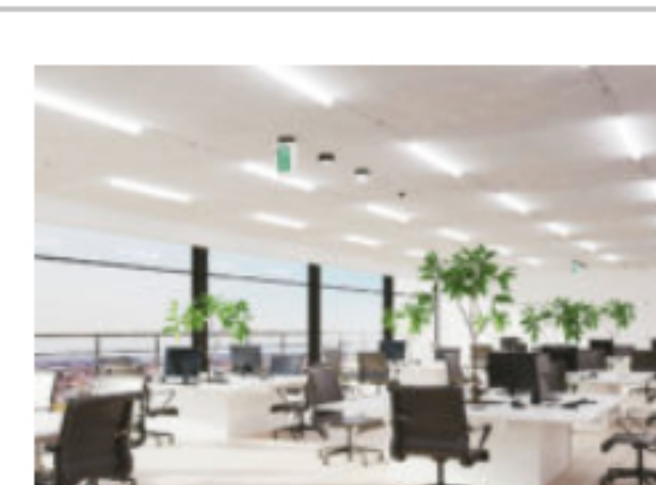
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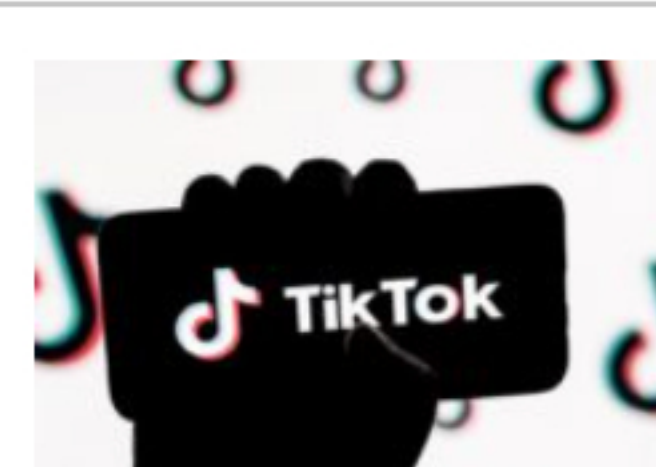
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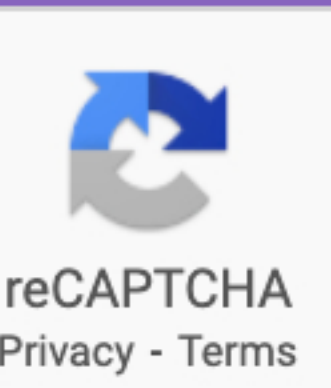
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