

MEDIA RELEASE

‘Above award’ pay does not immunise employers from Modern Award obligations

Employers still largely unaware how new modern awards will apply to their employees

29 June 2010 – Many employers risk liability for back-pay and penalties following the implementation of the Modern Awards under the new Fair Work Act because they have mistakenly assumed that if they pay above award rates or salaries other award obligations, such as leave loading, overtime, and penalty rates will not apply to their business, according to Harmers Workplace Lawyers.

Shana Schreier-Joffe, Partner at Harmers Workplace Lawyers, says many employers are still unaware what awards apply to their business. Instead she says myths and uncertainty abounds.

“What we’re seeing are employers from all industries assuming because they pay above award rates they are excluded from paying other entitlements or award obligations to their employees, which is simply not the case.

“In reality, these employers run a grave risk in ignoring their award obligations. Businesses could expect to face significant financial penalties including back-pay to employees and penalties from the Fair Work Ombudsman,” she said.

With 1 July fast approaching, the date on which many of the transitional provisions will apply, employer appetite for further guidance on the complex Modern Awards scheme is evident. Recent public information seminars hosted by the firm in Sydney and Melbourne saw over 300 attendees, said Ms Schreier-Joffe.

In addition, since many businesses review wages at this point in the financial year, Ms Schreier-Joffe said now was also the perfect time for employers to review all employment contracts to ensure their compliance with modern awards.

“Employers expecting their above award salaries will cover all entitlements under the award should also check their contracts of employment to ensure they are meeting their obligations.

“It is important to make sure above award payments are actually equal to or more than the employee would have been entitled to under the relevant award, including taking into account penalties, loadings and allowances,” said Ms Schreier-Joffe. In addition, many awards do require that if above award rates are paid, the allowances and entitlements set off by such an “all up” rate must be specifically set out in writing.

Another key factor for employers to consider is the transitional arrangements scheduled to begin on 1 July. According to Ms Schreier-Joffe, almost all modern awards include transitional arrangements. Consequently, it is important to check the

modern award to determine what, if any, transitional arrangements apply to relevant employees.

“Employers should compare their current employment contract entitlements with the entitlements the employee would receive under the relevant modern awards and see whether or not employees are better or worse off.

“Depending on whether employees are worse or better off under the relevant modern award could see businesses exposed to unexpected increases in payroll. Without this audit, employers could render themselves liable under the Fair Work Act for non-compliance with modern awards, and be faced with significant back-pay and penalties,” she concluded.

Practical advice for business:

Ms Schreier-Joffe said employers should take the following steps:

- Review employee duties
- Identify potentially applicable awards
- Check coverage and classifications
 - Review definitions
- Resolve overlap
- Plan compliance transition
 - Modify contracts, policies and procedures
 - Consider payroll implications
- Explore flexibility potential, including:
 - Guarantee of annual earnings
 - Individual flexibility agreement
 - Specific award clause arrangements
 - Annualised salaries
 - Common law contracts
 - All up rates
 - Enterprise agreements

Ends

Note to editors:

About Harmers Workplace Lawyers

Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia’s leading employment and industrial law firms, with offices in Sydney and Brisbane. The firm has been awarded Australasian Legal Business’s ‘employment specialist firm of the year’ for the past five years running.

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