

A VISION IN THE WORKPLACE

Our June edition of Vision includes:

- Josh Hoggett Admitted as a Lawyer in the NSW Supreme Court;
- National Minimum Wage and Award Rate Increases;
- Fair Work Ombudsman Announces 2022-23 Priorities; and
- Recent Underpayment Case Results in Substantial Penalties.



Stevens & Associates Congratulates Our Newly Admitted Solicitor

Congratulations to **Josh Hoggett** who was admitted last Friday as a lawyer in the NSW Supreme Court.

He was moved by our director, **Nick Stevens**.

Josh has worked here at Stevens & Associates since his first year of law school, first as a Paralegal and most recently as a Graduate at Law. We are looking forward to seeing him continue his great work here as a Solicitor.



National Minimum Wage and Award Rate Increases

Following the Labor Party's recent win and Anthony Albanese's stance to support a wage rise in line with inflation, the Fair Work Commission ("FWC") handed down a rare split increase decision on Wednesday, 15 June 2022.

The Decision

According to the new government, this decision will assist individuals with the increasing cost of living and ensure that people who are on the minimum

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wage, do not “go backwards” – many of which were adversely affected throughout the pandemic.

What will it look like?

In light of this, the following changes will take place for the majority of workers on 1 July 2022:

- The FWC has ordered a 5.2% increase to the national minimum wage, which will impact 184,000 workers.
 - The new national minimum wage will be \$812.60 per week or \$21.38 per hour.
 - This constitutes an increase of \$40 per week or \$1.05 per hour.
- The minimum increase for the 2.6 million workers on higher-award rates will be \$40 per week or 4.6% - depending on which one is higher.

In short, this means that the modern award minimum wage rates will increase by 4.6% for wage rates above \$869.60 per week, or by 5.2% (\$40 per week) for wage rates below \$869.60 per week.

The 5.2% rise in the national minimum wage is the highest increase since 2006, and the 4.6% award rate increase is the highest since 2010.

When will it happen?

Increases to both the national minimum wage and modern award minimum wage are set to take place for the majority of sectors from 1 July 2022. However, the FWC has considered it necessary to activate the ‘exceptional circumstances’ clause to delay the start date of the wage increases for specific industries. Sectors that can expect to experience these increases have been separated into two groups as follows:

Group 1

- Covers industries that have recovered from the pandemic or are on the path to recovery.
- These industries will see an increase from 1 July 2022.

Group 2

- Covers industries still being impacted by the pandemic. The FWC stated it ‘was satisfied that exceptional circumstances exist’ for these sectors as a result of the pandemic, and that these circumstances warrant such a delay.
- This includes industries such as tourism, hospitality, and aviation.
- These industries won’t experience an increase until 1 October 2022.

April 2022

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Further impacts and challenges

Concerns have been raised by business groups stressing the increase of labour costs coming at the same time as other inflationary pressures.

Andrew McKellar, the head of the Australian Chamber of Commerce and Industry, stated that this change will "add \$7.9 billion in costs to the affected businesses over the year ahead". This is a burden that those businesses will either have to take to their bottom line or pass onto their customers. Mr McKellar also noted that "it comes at a time when inflation is emerging as one of the most urgent challenges facing the Australian economy".

Conclusion

While the wage increase coincides with increasing inflation, the FWC maintains that it will not adversely impact the economy. This has been supported by Sally McManus, head of the Australian Council of Trade Unions, who stated, "this decision is one that is reasonable and fair" and will assist low-paid workers most affected by rising inflation.

Notwithstanding this, the impact of increased labour costs come at a time where inflation pressures are projected to intensify after the Reserve Bank anticipated that the rate of inflation will increase to 7% by years end.

Should this wage increase ruling raise any questions for your or your company, please do not hesitate to contact us as we now offer a Modern Award Audit Package. This package has been developed to provide employers with 'peace of mind' by reviewing your Company's compliance with relevant Modern Awards. This package will ensure your company correctly implements the new minimum wage requirements and underlying employment law legislation and regulations.

For more information on the Modern Award package please see our [website](#), or contact [Nick Stevens](#), [Daphne Klianis](#) or [Josh Hoggett](#) on 9222 1691.



**Fair Work Ombudsman
Announces 2022-23 Priorities**

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On 22 June 2022, the Fair Work Ombudsman Sandra Parker (FWO) has announced their strategic priorities for the year ahead. We summarise the priorities to give employers and employees alike a 'heads up' for what is to come from the regulatory body:

1. University Sector

Ms Parker said the universities sector was a new compliance and enforcement priority after regular self-reports from universities of significant underpayments, including to casual workers.

"We are concerned about the allegations of long-running underpayments in many universities, with our current investigations finding trends of poor governance and management oversight, and a lack of centralised human resources functions and investment in payroll and time-recording systems. We expect to be taking high-level enforcement action against a number of universities this year, and urge all to prioritise their compliance," Ms Parker said.

2. Fast food, Restaurants and Cafes and Agriculture

Fast food, restaurants and cafes and agriculture will be the key industries of focus in 2022-23.

"The FWO continues to find high levels of non-compliance in the fast food, restaurants and cafe sector, with many requests for assistance coming

from vulnerable workers. That is why we will continue to undertake proactive investigations in metropolitan food precincts across the year," Ms Parker said.

"The agriculture sector is a priority given its reliance on visa holders, who can be at greater risk of exploitation, and its often complex labour supply chains. The Fair Work Ombudsman will also be playing a key role in both education and enforcement of the recent Horticulture Award changes."

3. Investigating Large Corporate Underpayments

Ms Parker said that investigating large corporate underpayments remained a priority for the regulator.

"We are currently investigating about 50 large corporates that have self-reported non-compliance. Since mid-2021, we have commenced court actions against Woolworths Group, Commonwealth Bank and Coles which are ongoing, and we expect to take further high-level enforcement action against a range of large corporates this year," Ms Parker said.

4. Support Small Businesses

Ms Parker said the regulator would continue to prioritise assistance to small businesses,

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recognising the crucial role they had played in the nation's economic recovery from COVID-19.

5. Compliance and Enforcement Activities

Compliance and enforcement activities will continue throughout the year in contract cleaning and through the FWO's sham contracting unit.

"We will continue to enforce wage laws to ensure vulnerable workers, including visa holders and young workers, are protected, while helping both employers and workers with free advice," Ms Parker said.

Takeaway

We recommend that employers are proactive in ensuring their compliance with minimum pay rates and awards, rather than waiting to be investigated.

The reason for this is the substantial penalties that are awarded against employers for non-compliance and the significant amounts of back pay that must be paid to reimburse employees for wage underpayment.

If you have any question about the FWO priorities for 2022-23 or seek assistance with ensuring you are classifying and paying your employees correctly, please do not hesitate to [contact Nick Stevens, Daphne Klianis or Josh Hoggett.](#)



Recent Underpayment Case Results in Substantial Penalties

The FWO has secured a total of \$204,000 in penalties against the operators of Riddhi Siddhi Pty Ltd ("**the Company**"), which operates 'Vege Rama' – a Brisbane fast food outlet, after the use of false records to disrupt their investigation.

Background

The FWO investigation into the business was first launched in November of 2020, after the Ombudsman received a request for help from a Nepalese visa holder who was working as an occasional kitchen helper from April 2018 to August 2019. The employee was aged in his twenties at the time, worked between 50 and 60 hours per week and was paid \$11 to \$13 an hour. These amounts clearly fall well below the national minimum wage, which is now increasing to 812.60 per week or \$21.38 per hour, as of 1 July 2022.

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It was found that the Company breached the Fair Work Act 2009 (Cth) by providing false and misleading records and pay slips to Fair Work Inspectors, incorrectly showing the hours worked by the employee, and that the employee was paid above award wages. The company also failed to comply with a Compliance Notice which required it to calculate and back-pay the worker's entitlements. Ruchika Sharma, the company director, was identified to be involved in the provision of these matters.

The Decision and Outcome

Following a lengthy court battle, the Federal Circuit and Family Court have imposed a \$185,000 penalty against the Company and an additional \$19,000 personal penalty against the Company's owner.

Judge Vasta identified these actions as "an attempt to obfuscate the truth and to ensure that any proper investigation was never able to be pursued". The Judge maintained "this was a deception that went to the heart of the fair industrial and employment system of this country."

Takeaway

This case serves as a cautionary tale for companies, which demonstrates that "falsifying records and

providing them to the Fair Work Ombudsman is extremely serious conduct and it will be met with the strongest possible enforcement action," Ms Parker, the current FWO said.

Furthermore, Judge Vasta described the conduct as "extremely difficult to detect". Hence, "employers also need to be aware that taking action to protect vulnerable workers, including visa holders, and improve compliance in the fast food, restaurant and café sector continues to be priorities for the FWO."

If you have any question about managing wage underpayment or award classification cases more generally, please do not hesitate to contact [Nick Stevens](#), [Daphne Klianis](#) or [Josh Hoggett](#).

This publication is intended only as a general overview of legal issues currently of interest to clients and practitioners. It is not intended as legal advice and should only be used for information purposes only. Please seek legal advice from Stevens & Associates Lawyers before taking any action based on material published in this Newsletter.