



Fair Work
OMBUDSMAN

WA Enterprise agreement campaign 2013-2014

Final report – August 2014

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Program snapshot

Total of

49

businesses were assessed

We found

78%

were paying their employees correctly

We found

84%

were compliant with payslip and record-keeping requirements

More than

\$43K

was recovered on behalf of 574 employees

Summary

The Fair Work Ombudsman (FWO) commenced the WA Enterprise agreement campaign 2013 - 2014 (the campaign) in September 2013.

The campaign aimed to assess compliance with Australia's workplace laws amongst businesses in Western Australia (WA) with approved registered agreements. Registered agreements include enterprise agreements or agreement-based transitional instruments that cover employee terms and conditions of employment.

We selected a sample of businesses that operate in a variety of industries across WA, including retail, fast food, food and wine production.

We wrote to 49 selected businesses to request copies of their time and wage records for assessment. Fair Work Inspectors reviewed the records and found that:

- 38 (78%) businesses were paying their employees correctly
- 41 (84%) businesses were compliant with record-keeping and pay slip requirements.

During the campaign we recovered \$43 100 on behalf of 574 employees who were underpaid.

Further information about our findings can be found in the body of this report.

Campaign objectives

The specific objectives of the campaign were to:

- assess compliance amongst a sample of national system businesses in WA with approved registered agreements

- educate businesses about the interaction between their agreement and the *Fair Work Act 2009* (the Act) or the *Fair Work (Transitional and Consequential Amendments) Act 2009* in relation to the agreement base rate of pay.
- assess to what extent businesses were meeting obligations in regard to record-keeping and pay slip practices set out in the Act and the *Fair Work Regulations 2009* (the Regulations):

Why we conducted the campaign

In conducting campaigns in WA over recent years we have observed that some businesses are unaware of the interaction between the minimum rate of pay prescribed in an award (or minimum wage order where there is no relevant award) and the rate of pay continued in registered agreements. There is sometimes a mistaken impression that what is set out in an agreement is the sole determinant of pay rates for employees.

The Act states that the base rate of pay in an agreement (or an agreement-based transitional instrument) must not be less than the award base rate (or the minimum wage order rate of pay). If the agreement rate is less, the relevant award (or minimum wage order rate of pay) will override the rate in the agreement.

We therefore decided that the campaign was an opportunity to assess current practices and to promote the correct understanding of the interaction between agreements and awards concerning pay rates. The campaign also

provided an opportunity to promote and assess correct pay slip and record-keeping practices.

What we did

We wrote to businesses in September 2013 to inform them about the campaign and to request a sample of time and wage records for assessment.

We selected businesses that operated in a number of industries including the retail, fast food, food and wine production.

We assessed the records received to ensure that:

- where the agreement base rate of pay was less than the applicable award (or minimum wage order) that the award base rate (or minimum wage order rate) was paid.
- where the agreement provided a higher base rate than the rate prescribed by the award that employees received the pay rate as per the agreement.
- businesses were following correct pay slip and record-keeping practices.

In cases where we identified that a business had made pay slip or record-keeping errors, we informed them of the requirements of the Act and the Regulations. We further required that they undertook, in writing, to follow correct practices in future.

For those assessments in which we identified errors relating to pay rates, we discussed our findings with the business, and explained how their agreement interacts with the Act. We worked with them to ensure that they understood why they had made errors and to

ensure that all employees affected by underpayments received all entitlements owing.

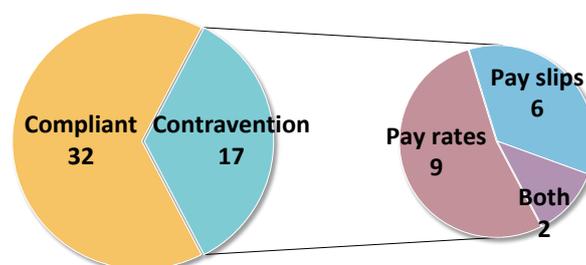
In working with businesses to resolve any errors identified, we also advised them how to check the pay rates in their agreements against those in the relevant award or minimum wage order, to ensure they do not inadvertently underpay staff in future.

What we found

Of the 49 businesses we assessed:

- 32 (65%) were compliant with all requirements
- 17 (35%) had made at least one error, of which:
 - 6 (12%) related to pay slips
 - 9 (19%) related to incorrect pay rates
 - 2 (4%) related to both pay rates and pay slips

CHART 1: AUDIT RESULTS



We recovered \$43 100 on behalf of 574 employees who were entitled to back pay.

One of the employers found to have made errors was Australian Fast Foods Pty Ltd, which own and operates the Chicken Treat brand. Fair Work Inspectors identified errors regarding hourly pay rates and uniform and laundry allowances in 22 company owned Chicken Treat stores across Western Australia.

This resulted in a \$35 205 recovery for 457 employees from the 22 company owned stores.

Further observations

The pay slip errors we identified each related to pay slips that did not contain all of the required information. In all cases of pay slip errors, the employers were informed about the requirements and they updated their pay slips accordingly.

Case Study: Annual wage increase overlooked

Australian Fast Foods Pty Ltd operates a fast food chain with a number of stores across WA. We requested a sample of time and wage records from for an assessment.

We identified underpayments of the part-time and casual hourly rates as well as underpayments of the uniform/laundry allowance.

We advised the company of our findings and they took action to determine how these errors had occurred. The company was aware of the interaction between the Act and the agreement base rate of pay

and had previously ensured they were paying staff their correct entitlements.

However, a review of their payroll software found that the July 2013 wage increase had not been applied to the subsequent pay rates.

The company calculated the total underpayments across their stores and the number of employees affected.

We worked with the company to ensure that all errors were rectified.

In addition, they entered into a Proactive Compliance Deed (PCD) with FWO, agreeing to work in collaboration with the FWO to ensure that there were no further underpayments under their 2009 Agreement (including two self-audits to be completed by 31 December 2014).

The PCD will also help to ensure the company remains compliant into the future. Further information in relation to this PCD is available at [Australian Fast Foods Pty Ltd - PCD](#).

The majority of businesses co-operatively engaged with us and willingly discussed their obligations.

Businesses that had made errors promptly responded to our findings and took the appropriate action to rectify their errors.

Case study: Correct interaction between an agreement and the Act

John* owns a retail business and has an employee collective agreement in place. John provided a sample of time and wages records for assessment.

We found that John was meeting the minimum agreement entitlements as well meeting the minimum base rate of pay underpinned by the award.

However, John was unaware that the casual loading from the agreement continues to apply on top of the base rate of pay in the award.

We explained to John the requirements of the Act and the interaction between the award base rate of pay and the casual loading in the agreement.

Once John understood this, he willingly rectified his error. As a result, a junior casual employee received a back payment of over \$170.

* Not his actual name

Concluding remarks

The campaign aimed to assess compliance with Australia's workplace laws and educate businesses about the interaction of registered agreements with the Act.

We found nearly two thirds of employers audited compliant with all of their obligations. Further, nearly 4 out of 5 employers were paying their staff correctly.

For those businesses with pay rate errors, we were able to provide advice about the correct interaction between their agreement and the Act, satisfying a campaign objective.

This campaign also led to a PCD with Australian Fast Foods Pty Ltd. This is a positive example of how we continue to look for ways to assist employers and employees to achieve fair workplaces.

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the Fair Work Act 2009 on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace.

Our education and compliance campaigns target specific industries to assist them achieve compliance with national workplace laws. Our focus is usually industries that need assistance with compliance and employ vulnerable workers.

We like to work with relevant industry associations and unions to deliver our campaigns. We rely upon their 'real world' knowledge and communication channels to design and deliver our education activities and products.

This report covers the background, method and findings of the WA Enterprise agreement audit program 2013 - 2014.

For further information and media enquiries please contact us at media@fwo.gov.au

If you would like further information about the Fair Work Ombudsman's targeted campaigns please contact Lynda McAlary-Smith, Executive Director - Proactive Compliance and Education (Lynda.mcalary-smith@fwo.gov.au).

Commonwealth of Australia 2014

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