

## IBM signs Enforceable Undertaking

11 September 2020

Multinational technology company IBM has back-paid Australian employees more than \$12 million after entering into an [Enforceable Undertaking \(EU\) \(DOCX 53.8KB\) \(www.fairwork.gov.au/ArticleDocuments/545/IBM-Enforceable-Undertaking%20-%20Final%20-%20REDACTED%20\(002\).docx.aspx\)](#) (PDF 12.3MB) ([www.fairwork.gov.au/ArticleDocuments/1545/IBM-EU-Final.pdf.aspx](#)) with the Fair Work Ombudsman.

IBM Australia Ltd and IBM Global Financing Australia Limited self-reported to the regulator last year that they had underpaid employees after failing to apply the relevant Awards.

The underpaid employees, located across all States and Territories, were variously covered by Business Equipment Award 2010, the Professional Employees Award 2010, the Banking, Finance and Insurance Industry Award 2010 and the Nurses Award 2010.

IBM had failed to apply the Award to most of its employees because they were salaried professionals earning significantly above minimum Award wage rates.

This led to IBM failing to provide employees with more than 15 different Award entitlements and conditions, with the most significant issues relating to vehicle allowances, superannuation entitlements and annual leave loading.

A significant number of casual staff at IBM's contact centre in Ballarat were paid the National Minimum Wage, as opposed to the higher rates and entitlements in the applicable Award.

As at 1 February this year, IBM had identified and back-paid 1647 workers a total of \$12.3 million, which includes interest, for underpayments that occurred between 2012 and 2020. Individual back-payments range from less than \$1 to over \$145,000. The employees impacted included technical professionals who use a motor vehicle as part of their role, as well as the casual workforce.

Further underpayments, expected to be significant in size, are yet to be quantified and the EU requires the organisation to calculate and pay outstanding amounts to every affected employee by 16 October this year.

Fair Work Ombudsman Sandra Parker said that an EU was appropriate as IBM had cooperated with the investigation and demonstrated a strong commitment to rectifying all underpayments.

"Under the Enforceable Undertaking, IBM has committed to stringent measures to comply with the law and protect its workforce. This includes engaging, at its own cost, an expert auditing firm to conduct an independent assessment of the outcomes of its rectification program and to audit its compliance with workplace laws over the next two to three years," Ms Parker said.

"This matter serves as a warning to all employers that if you don't prioritise workplace compliance, you risk underpaying staff on a large scale. Any employers who need help meeting their lawful workplace obligations should contact the Fair Work Ombudsman for free advice."

The Enforceable Undertaking commits IBM to make two contrition payments to the Commonwealth's Consolidated Revenue Fund by 27 November 2020. In total, the two contrition payments will be equal to 5.25 per cent of the underpayments IBM identifies for all employees.

Under the EU, an expert will conduct its own review of the underpayments identified by IBM, which is due to be completed next year, and report the results directly to the FWO. Any further underpayments identified by the expert will attract a higher contrition payment of 7 per cent.

IBM must also fund an independent organisation to operate a Hotline to assist its employees for the next 12 months. IBM is also required to display public, workplace and online notices detailing its workplace law breaches, and must apologise to workers.

Employers and employees can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94 for free workplace advice. A free interpreter service is available on 13 14 50.

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