

Guide to CHOOSING THE RIGHT AWARD

There are over 122 Awards that cover employees in Australia and determining the right one can be difficult. Awards set minimum pay rates and conditions of employment for employees in certain industries, such as hours of work, rosters, breaks, allowances, penalty rates and overtime.

The consequences of getting it wrong, or incorrectly applying an Award, can have serious financial implications for businesses. Just recently it was reported that LUSH cosmetics had unintentionally underpaid its staff since 2010 due to an incorrect interpretation of an Award, resulting in LUSH having to backpay employees approximately \$2 million.

In this article we'll provide you with tips on finding the right Award for your employees.

TIP 1 - REVIEW AN EMPLOYEE'S POSITION & DUTIES

An employee will be covered by an Award where they perform work that falls within the scope of an Award. Although Awards generally do not cover professionals or senior management positions, you should still carefully check an employee's role against an applicable Award as some Awards do in fact cover employees in management positions.

TIP 2 - USE THE "FIND MY AWARD" QUESTIONNAIRE ON THE FAIR WORK WEBSITE

The Fair Work Ombudsman makes available on its website a "Find my Award" questionnaire (see: www.fairwork.gov.au/awards-and-agreements/awards/find-my-award) which asks you questions to assist you in finding whether an employee is covered by an Award. You should retain a copy of the results you obtained from the questionnaire for your records.

Although it is useful in assisting you, it will only provide you with suggested Awards based on limited information and therefore may not bring up every Award that may apply, or alternatively, it may bring up Awards that do not apply. You should therefore carefully read what each Award provides and whether there are others that may apply. The Fair Work Ombudsman also makes available a list of industry and occupation Awards available for you to browse.

TIP 3 - READING THE AWARD

Once you have identified the Award/s which may apply, you must review two key terms of the Award to determine whether it actually applies to your employees.

The first clause is the "coverage" clause, which is usually contained in clause 4. This sets out the types of businesses and employees that the Award covers. If you determine that the Award does cover you, you must then determine if the Award covers a particular employee's role by reviewing the "job classifications" section of the Award. This is usually found in the pay section or a Schedule to the Award.

If you are not certain whether an Award applies, seek legal advice.

TIP 4 - BUSINESSES CAN BE COVERED BY MORE THAN ONE AWARD

The applicable Award depends on the industry that the employee works in and the type of job that they perform. For example, if you run a labour hire company and you have a carpenter and a receptionist working for you as employees, two different Awards will apply to your business (one for each employee). As such, it is important that you review the roles of each of your employees, and not just blanket all employees under one Award. If multiple Awards do apply to your business, it can be an administrative nightmare attempting to ensure each individual receives their specific entitlements under the applicable Award. In this case, we can explore options with you, such as individual or enterprise wide agreement which align entitlements across the business, and avoiding the administrative hassle of complying with the individual requirements of each Award.

On the other hand, an employee's role may be covered by more than one Award. In that case, you must apply the Award which is most appropriate having regard to the principal purpose of the employee's employment.

TIP 5 - KEEP UP WITH CHANGES

Subscribe for updates from the Fair Work website <https://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates-and-keep-up-to-date> with important workplace issues.

KEY TAKEAWAY

It is important that you keep up to date with the Awards and any future developments. It is your responsibility as an employer to ensure that your employees' employment is compliant with the minimum pay rates and conditions as set out in an applicable Award. For assistance in finding the right Award, get in touch with one of our team today.