



## INDIVIDUALS LIABLE FOR AWARD UNDERPAYMENTS

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### WHEN IS AN INDIVIDUAL LIABLE FOR AWARD UNDERPAYMENTS?

An individual, not just the employer company, can be liable for compensation or penalties for Award underpayments, if that individual is “involved in” the underpayment.

To be “involved in” an underpayment, the individual must have:

- . aided, abetted, counselled or procured the contravention; or
- . induced the contravention, whether by threats or promises or otherwise; or
- . been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- . conspired with others to effect the contravention.

The definition of “involved in” is very broad and will capture circumstances where an individual has actual knowledge of the Award which specifies minimum rates and that rates actually being paid were less than the rates specified.

This knowledge can be inferred, particularly where an individual has worked in the relevant industry for a significant period of time.

Even individuals who are no longer involved in the employer’s business, but who were involved at the time of the contravention, can be held liable for Award underpayments.

### RECENT PENALTIES AWARDED AGAINST INDIVIDUALS

In February 2015, the Federal Circuit Court of Australia ordered that the current and several former directors of the employer company were liable for compensation to an employee who was paid under the Award.

In April 2015, the Federal Court of Australia ordered that a director of the employer company pay a penalty in the sum of \$8,000 for being involved in Award contraventions, specifically failing to pay the Award rate for two employees.

In June 2015 the Federal Circuit Court of Australia ordered the sole director of the employer company to pay a penalty of \$28,900 for contravening the relevant Award in respect of 15 employees that were not paid the minimum wage.

The number of decisions that impose penalties on directors show that the courts are more than willing to sheet liability home to individuals in circumstances of Award underpayments.

Although in most cases, the individuals liable are directors of the company, the liability can extend to individuals who are not directors. For instance, in the right circumstances, managers and supervisors could be found to be “involved” in an underpayment and liable to pay penalties.

## WAGE INCREASE EFFECTIVE 1 JULY 2015

As a result of the annual wage review, the Fair Work Commission has increased the minimum wage, and all Award rates, by 2.5% effective from the first full pay period after 1 July 2015.

This serves as a timely reminder to review your wage rates to ensure compliance with the relevant Award and to minimise the risk of claims against your business or even you personally.

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