

ACTUS WORKPLACE LAWYERS

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\$10 million in penalties imposed on Commonwealth Bank for underpaying staff

The Commonwealth Bank of Australia (CBA) has been fined more than \$10 million for underpaying a group of employees between 2015 and 2021.

Amongst other contraventions, CBA was held to have breached a better off overall clause in its 2014 and 2016 enterprise agreements. The clause required that, on an annual basis, CBA must calculate the entitlements of each employee under the relevant award and compare this to the remuneration paid under the enterprise agreement. Where a shortfall occurred, the employee was entitled to a top-up payment within a month of the end of the relevant period. CBA failed to carry out this reconciliation process.

CBA was also held to have breached the better off overall requirements in Enterprise Flexibility Arrangements (IFAs) that the bank entered into with many employees.

In the [judgment](#), Justice Bromwich of the Federal Court of Australia said:

These were substantial and prolonged contraventions by large and wealthy financial institutions who were amply able to prevent anything of this nature occurring in the first place, let alone over such a substantial period of time. An absence of deliberate wrongdoing is generally going to be very important when there are live issues of proportionality between the culpability of the conduct and the sanction to be imposed. But that is an approach borrowed from the criminal law that is no longer available. Deterrence to ensure compliance is the key. What needs to be deterred is a system being left in place that allows for basic errors to be made without an adequate system of checking or detection and thereby correction, and as a result erroneous assumptions made and untenable beliefs held with serious consequences for a large number, if not proportion, of employees.

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The problem with the arguments advanced by CBA and CommSec is that they focus in key parts on the nature of the errors and misunderstandings that led to the contraventions taking place, rather than focussing on the systems and processes that allowed that situation to arise in the first place, and the apparent lack of audit and other checking systems to ensure compliance on an ongoing basis. It is that lack of adequate systems that allowed the contraventions to take place and to continue for so long.

For further advice or assistance about any wage underpayment issues or to enquire about Actus Workplace Lawyers' payroll auditing services, please contact **Justine Smith**, Lawyer of Actus Workplace Lawyers on 0414 947 651 or Email: justine.smith@actuslawyers.com.au.