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## **Set off clauses in employment contracts – Lessons for employers – Federal Court Woolworths and Coles underpayment judgment**

On 5 September 2025, Justice Perram of the Federal Court of Australia handed down a [lengthy judgment](#) relating to actions which the Fair Work Ombudsman and Adero Law are pursuing against Woolworths and Coles. The actions allege that Woolworths and Coles have underpaid a large number of employees in store-based management positions. Each of the employees was paid an annual salary.

There are many interesting aspects of the judgment and various important lessons for employers, including lessons about the correct use of ‘set off clauses’ in employment contracts.

For an employee to whom an award applies, an appropriately drafted set off clause in an employee’s employment contract allows the employer to pay the employee an amount in a pay period which satisfies all award entitlements payable during the pay period. Without a set off clause, one award entitlement (e.g. an over-award wage rate) cannot be set off against another award entitlement (e.g. a tool allowance).

Set off clauses were included in the employment contracts of the salaried employees of Woolworths and Coles. However, Justice Perram decided that:

- The set off clauses in the employment contracts only allow setting off of award entitlements within fortnightly pay periods, and not over a six month or 12-month period.
- Even though an award entitlement may accrue across more than one pay period (e.g. annual leave loading), it is only payable at a particular time (e.g. in those pay periods where the employee is taking annual leave). The ability to set off award entitlements relates to entitlements that are *payable* during a pay period.
- Contrary to Woolworths’ argument, the Fair Work Commission’s *Annualised Wage Arrangements Decision* [\[2018\] FWCFB 154](#) (at paragraph [102]) is not authority for the proposition that a properly drafted annualised salary arrangement in an employment contract can allow set-off of award entitlements over the course of a year.
- Section 323(1) of the Fair Work Act requires that employees are paid *in full* and *at least monthly* for the amounts payable in relation to the performance of work. This legislative provision is not a source of award entitlements; it just regulates pre-existing obligations. The relevant award provisions require that employees are paid at least fortnightly for the ordinary hours and overtime they have worked.

The final point above has relevance for hours of work and pay averaging arrangements in awards. Many awards allow hours of work to be averaged over a roster cycle. Also, many awards allow pay to be averaged over more than one pay period (e.g. where an employee is entitled to an RDO every 20<sup>th</sup> day). In considering what award entitlements are relevant for the purposes of setting off within a pay period in accordance with a set off clause in an employment contract, the relevant entitlements are those that are *payable* in the pay period.

For further advice or assistance on employment contracts or underpayment matters, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: [stephen.smith@actuslawyers.com.au](mailto:stephen.smith@actuslawyers.com.au).



When was the last time your business had its template employment contracts reviewed for compliance and best practice? Well drafted employment contracts reduce many employment risks. For assistance, please contact Actus Workplace Lawyers.