

ACTUS WORKPLACE LAWYERS

12 September 2025

Pay Records – Lessons for employers – Federal Court Woolworths and Coles underpayment judgment

Justice Perram's 5 September [judgment](#) in the Woolworths and Coles underpayment case includes lessons for employers about the importance of keeping correct and complete pay records for each employee in the prescribed form, including records about additional hours worked.

Subsection 535(1) of the Fair Work Act requires an employer to make, and keep for 7 years, employee records of the kind prescribed by the Fair Work Regulations. The records must be in a 'form that is readily accessible to an inspector'.

The Regulations require that records are kept of each monetary allowance, loading, penalty rate, incentive-based payment and bonus that an employee is entitled to be paid. Also, if a penalty rate or loading must be paid for overtime hours worked, the employer must keep a record that specifies either the number of overtime hours worked by the employee during each day or when the employee started and finished working overtime hours on each day.

Woolworths and Coles argued that because the employees were paid an annualised salary in reliance on a set off clause in each employee's employment contract ([see separate news article](#)), records were not required to be kept of each separate award entitlement. Justice Perram rejected this argument and concluded that pay records must be kept of each separate award entitlement that is referred to in the Regulations.

Woolworths also argued that it was not required to keep records of overtime hours because the information could be deduced from the rosters published in its Kronos system and from clocking data for each employee. Justice Perram rejected this argument and pointed to the requirement that pay records must be "in a form that is readily accessible to an inspector" and in a form that can be copied and made available to an employee or former employee for inspection upon request.

For further advice or assistance on pay records or underpayment matters, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.