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Paper chase – Bundy clocks, toilet paper and award compliance

Concerns over the underpayment of workers is a complex matter from which law firms are not immune, but the key is to be proactive over pay and conditions for staff and to follow a checklist to ensure that the fine detail is being addressed, writes Leonie Green.

What a strange world we are living in at present.

In the past month we have seen a rush to stockpile toilet paper (I am still processing that one) and a rush to set up bundy clocks to capture the start and finish times of employees. Why now and just why in general? Why are we behaving in a way that is pressure prompted, non-sensical and missing the bigger picture altogether? Can we please call time for a moment (pardon the pun).

Wages conundrum

Let's leave the toilet paper question for another day, and focus on why the Bundy clocks have become suddenly popular.

There has been a string of news items covering high-profile underpayment cases, involving among others *MasterChef's* George Colombaris, Woolworths, Coles and then the legal industry, starting with Ashurst and Maurice Blackburn. The Fair Work Commission has also decided to introduce an annualised salaries clause into many awards, including the Legal Services Award 2010.

These two items combined (news on underpayments and the Fair Work decision) has seen a significant uplift and rush in firms worrying about whether they are **compliant with the award**, and whether they are adequately managing **hours of work** for their award-covered employees.

What is problematic is that award compliance and hours of work are *not* new issues. The Legal Services Award 2010 is not a typo. It has been in place, as a modern award, since 2010. Prior to that it existed in other industrial instrument forms.

Award compliance is not new. The panic is new because suddenly it is being looked at by more savvy employees, and by an Ombudsman who is cashed up to deal with non-compliance. To add a further challenge, it has been considered by Fair Work in its award review process as an area needing improvement.

The annualised salary clause is not necessarily an improvement at all – and it is not the answer to your dreams. For many firms, it is likely to create more compliance woes than it is worth and is only going to cover your full-time employees in any event.

So, before you rush out to get a bundy clock and put an annualised salary contract in place, please get advice. Check that it is what is needed for your firm.

Consider the following steps (ideally on an annual basis, not a one-off, but start this process now if you haven't already):

1. Check your pay and conditions

- a. Know who is award-covered (support staff, law grads, law clerks) and what classification level they fall within in the award;
- b. Consider the pattern of work that your employees are expected to perform, including the hours in the office, breaks and work outside of the office;
- c. Get familiar with the award entitlements that apply, such as overtime and annual leave loading;
- d. Use a calculator or Excel spreadsheet to test your current salaries against the award minimum salaries and other entitlements that apply to your employees' patterns of work. If you are a member of [ALPMA](#), check out its resources to help with this process; and
- e. Get advice from an employment lawyer if the above calculations result in underpayments being discovered.

2. Check your contracts

- a. See if you have a clause in your contract that states that you are paying an annual salary that includes any and all entitlements that may apply under the award, including but not limited to allowances, overtime, annual leave loading and penalty rates. This is commonly referred to as a set-off clause, enabling you to set-off over-award payments against award entitlements that would otherwise need to be paid separately; and

- b. Get advice where needed on whether an annualised salary clause may help in your particular firm's circumstances – but in most cases, if you have a set-off clause, and your salaries sufficiently compensate the employees for the wages and conditions they are entitled to under the award, the chances are you are already adequately compliant.

3. Check your culture

- a. What expectations are set around hours of work? Is there an overtime policy? When does it apply, and is it promoted or used regularly? Are expectations consistent across the firm?;
- b. What sort of culture are you promoting? If it is 'hard work and long hours get rewarded' then make sure the hours of work the employees are performing are rewarded above the minimum requirements in the award. If it is flexibility and innovation, then consider how this is captured and promoted in terms of hours of work and pay;
- c. Are employees promoting unwritten cultural ground rules in terms of hours of work that are out of step with the firm's expectations? Is there a challenge with presenteeism?

New era

The way we work today is different. We work easily and readily outside of work. A Bundy clock will not capture this time. We also often spend time at work on personal issues. A Bundy clock doesn't clock off while someone checks their Facebook feed. In the same way that toilet paper will not save you from the coronavirus, the Bundy clock will not save you from the Fair Work Ombudsman. Your best protection is proactive, preventative measures.

Wash your hands. Sneeze into your armpit. Audit your salaries. Monitor your system of work. These proactive, preventative measures are the common-sense measures we should have been doing all along. And we need to keep doing them, long after the coronavirus is a distant memory.

Sensible, considered and consistent approaches are needed.

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