

EMPLOYEES MUST TAKE CARE WHEN PAYING ANNUALISED SALARIES TO AWARD-COVERED EMPLOYEES

A recent Western Australian Industrial Relations Court decision regarding annualised salaries paid to Modern Award covered employees serves as an important reminder of the importance of identifying, and carefully complying with applicable Modern Awards.

In *Simone Jade Stewart v Next Residential Pty Ltd* [2016] WAIRC 00756, the employer paid an annualised salary of \$78,000 to Ms Stewart, whose position was covered by the Clerks-Private Sector Award 2010 ("**Award**"). This salary was well in excess of the corresponding minimum rate of pay for Ms Stewart's classification level within the Award. The employer issued a contract to Ms Stewart which relevantly included the following provision:

"Your salary is inclusive of any award provisions/entitlements that may be payable under an award"

Ms Stewart nonetheless commenced legal action against Next Residential Pty Ltd for payment of overtime rates she claims were payable for work performed during the course of her employment.

Next Residential Pty Ltd argued no additional overtime rates were payable to Ms Stewart on account of her above-Award annual salary, and the remuneration terms expressed in her contract.

The Court ultimately found in favour of Ms Stewart, thereby allowing her to pursue an application for recovery of approximately \$29,000 in unpaid overtime. The Court's decision hinged on the wording of clause 17.1 of the Clerks-Private Sector Award 2010, which reads as follows (emphasis added):

(a) An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:

(i) clause 16-Minimum weekly wages;



(ii) clause 19-Allowances;

(iii) clauses 27 and 28-Overtime and penalty rates; and

(iv) clause 29.3-Annual leave loading.

(b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.

The Court found the wording of Ms Stewart's contract did not comply with the strict requirements imposed by clause 17.1 of the Award. Specifically, Next Residential's failure to:

(a) specifically identify the applicable Modern Award, and

(b) specifically identify which of the Award's provisions were satisfied by Ms Stewart's annual salary meant the employer could not establish Ms Stewart had received her monetary Award entitlements, even though Ms Stewart's overall salary exceeded her minimum Award entitlement.

Ms Stewart's case highlights the risks an employer can face when offering fixed annual salaries to award covered employees. Employers are encouraged to obtain expert legal advice when offering employment and preparing contracts for employees potentially covered under a Modern Award.

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