

# The Complexities of Rapidly Evolving Wage Law: Act Now to Mitigate Your Risk

No organisation wants to be headline news for underpaying its employees. However, many businesses are being publicly ostracised for violating enterprise agreements (EAs) in Australia. Not only are EAs incredibly complicated, wage law is also evolving rapidly, with Victoria and Queensland passing legislation in 2020. Unfortunately, rapid and complex EAs coupled with a shortfall in fully understanding the regulatory or the industrial environment are causing organisations to fall into non-compliance. The consequences can be devastating and include significant financial, criminal, reputational and regulatory penalties.

To avoid the potential penalties, reputational risk and headlines, organisations need to act now to get ahead of the curve and avoid being in breach of their employee wage rights. It is expected that the [new state laws recently passed in Victoria](#) and [Queensland](#), will spur other states in the Commonwealth to adopt similar laws. This makes it as important as ever that organisations ensure regulatory compliance in all jurisdictions.

## Know the Opportunities and Mitigate the Damage

Although employee underpayments make for a more explosive story, overpayments are almost equally pervasive – though underreported. Companies are as likely to find they overpaid employees as they are to be singled out for underpaying them. Wage complexity is a coin with two sides, one of which is an opportunity. Employers are encouraged to address wage accuracy risk not only for compliance purposes but as an opportunity to streamline industrial relations and payroll processes, which have been increasing in complexity over the years. It is up to management to review their internal governance, processes and technology to identify where things may be breaking down, along with improvement opportunities.

## The Devil is in the Details

Employees are paid wages by their employers based on one of the following:

- national minimum wage order issued by the Fair Work Commission
- modern award that sets out the minimum terms and conditions for a particular industry
- company-specific enterprise agreement which can override a modern award
- individual contract of employment between the employee and employer.

In many organisations, EAs dictate how a certain cohort of employees are paid. There are numerous clauses requiring interpretation, and the information is not always black and white. Subject-matter experts – including lawyers, industrial relations specialists and payroll practitioners– are needed to interpret and apply the EAs to payroll processes. From a maintenance perspective, it is essential to regularly review inputs into the payroll system such as employee classifications, position and wage rates, and the upstream processes such as rostering and scheduling, which can have a costly downstream impact on payroll processing.

Organisations must also fully understand the regulatory or industrial environment in which they operate. For example, in the retail or healthcare industries, the EAs can be confusing – some spanning hundreds of pages with 100 or more clauses. The clauses govern things like penalty rates, superannuation, overtime, commissions and entitlements. All of these clauses need to be understood and configured into the payroll system, staff must be trained, and a review process set in place to ensure changes to EAs are captured and implemented.

In addition to analysing the details of EAs, the other components of regulatory compliance are the payroll processes and the system itself. Expertise is needed to manage the payroll processes (including upstream processes like rostering and scheduling) and to configure the payroll system so that it mimics the parameters of the award. Unfortunately, some organisations do not have automated rostering systems or time and attendance systems. Instead, they use manual processes to manage their payroll, which can cause challenges with payroll accuracy due to human error.

## **New Laws Should Prompt Payroll Process Evaluation**

In Victoria, the [2020 Wage Theft Bill](#) becomes effective in July 2021 – and it is assumed that similar legislation in other states is forthcoming. Of concern is that criminal penalties and jailtime are included in the bill in the event an organisation’s directors deliberately underpay staff or fail to maintain payment documentation. This should prompt a proactive look into payroll processes to ensure compliance and avoid dire consequences. The following set of questions will help set the stage for what companies need to do next:

- Does the organisation have the expertise to interpret enterprise agreements and manage its payroll processes?
- Have the EAs’ clauses been properly configured into the payroll system?
- Are employee details such as classification, position, position history and wage rate entered accurately into the payroll system?
- Have payroll processes been subject to an internal audit review to determine if they have been designed and are operating effectively?
- What is the method of payroll record-keeping? Is it manual and subject to human error?
- Has the organisation made acquisitions? If so, has it inherited insufficient payroll processes and data integrity issues that could lead to liability and risk?

## Where Do Organisations Go From Here?

Management, audit and risk committees and the board must work together with internal audit and the three lines of defense to understand and address the broad spectrum of payroll challenges and risks. When all three lines of defense are effectively working together, compliance efforts with regulatory obligations can be more effective.

Performing periodic process and key controls reviews over the areas of human resourcing, scheduling and payroll processing are paramount. Further, it is essential to determine whether the payroll system is configured properly and, in the case of manual processing, where there may be opportunities to automate certain areas and controls with the highest risk of non-compliance.

Finally, internal audit will want to ensure that communication back to management, audit and risk committees and the board is clear around the nature and the type of work being undertaken to address payroll challenges and risks.

*Justin Yau will be presenting at [SOPAC](#) on 29 March 2021. Make sure you join his session "[Show Me the Money - Managing Wage Trust](#)". To find out more about Protiviti's Internal Audit and Financial Advisory services, visit our website [here](#).*

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