
CIRCULAR: GEN/213/NAT/213/25
DATE: 16 September 2025
SUBJECT: Federal Court Guidance on the Validity of Set-Off Provisions under Annualised Salary Arrangements
ATTENTION: Chief Executive Officer

The Federal Court of Australia has handed down a significant judgment that reshapes the way annualised salary and “set-off” arrangements operate. In *Fair Work Ombudsman v Woolworths Group Limited; Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd; Baker v Woolworths Group Limited; Pabalan v Coles Supermarkets Australia Pty Ltd* [2025] FCA 1092, the Court held that an employer cannot average an annual salary payment across a 26 week period to absorb Award entitlements. Rather, the Award entitlements triggered by the work performed in a pay period must be fully discharged in each individual pay cycle by the payment of the salary / wages in that pay period.

Background

The case arose from an action brought by the Fair Work Ombudsman (**FWO**) against Coles and Woolworths, and related to management staff covered by the *General Retail Industry Award 2010* who were paid an annualised salary pursuant to their employment contracts. The central question for this decision was whether an employer can meet its Award obligations by offsetting above-Award payments in one pay period against shortfalls in another pay period, provided that over the year the employee is paid more than the Award minimum.

The employer argument was that the annualised salary payment satisfied Award obligations on this annualised basis as the employees were paid more over the period of time. The FWO argued that the *Fair Work Act 2009* (Cth) requires full compliance in each pay period, not just over the course of a year.

The Decision

Justice Perram examined authorities on set-off clauses and annualised salary arrangements before concluding that the FWO’s position was correct – that the Award payments were required in each pay period, in full, at a minimum.

The weight of this conclusion means that an annualised salary can be used to offset the obligations under an Award within the pay period only. That is, an overpayment of Award minimum entitlements in one pay period cannot be designated to meet the shortfall of Award minimum entitlements in another pay period – there will be an underpayment in the first-mentioned pay period and therefore a contravention of the Award.

What does this mean for employers?

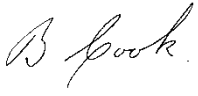
The decision is significant and is likely to impact many contractual arrangements providing for the payment of an annualised salary to meet the minimum payment obligations arising under an industrial instrument (ie the conclusions in the decision will apply to employers with an enterprise agreement covering employee/s who are paid an annualised salary).

As outlined above, the key takeaways are:

- an underpayment will likely arise where an employer relies on the payment of an annualised salary during a pay period where the actual amount paid is lower than the minimum entitlements triggered by an industrial instrument by the work performed within that pay period;
- to avoid the above, employers should review their contractual / industrial instruments and may need to make “top-up” payments in certain pay periods to avoid an underpayment.

It is not known whether the decision will be appealed.

However, given the decision, employers should seek advice on their annualised salary arrangements.

A handwritten signature in black ink, appearing to read 'B Cook'.

Brian Cook
Managing Director

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