

## PRACTICAL GUIDANCE EMPLOYMENT LAW SAMPLE DOCUMENT

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1. [\*FWO bares its teeth with systemic underpayments by large corporates a priority for 2020/21\*](#)

**Client/Matter:** -None-

## [FWO bares its teeth with systemic underpayments by large corporates a priority for 2020/21](#)

**Date:** 23 September 2020

**Source:** [Parliament of Australia](#) 

### **Abstract:**

The Fair Work Ombudsman (FWO) tabled an opening statement at a public hearing in the unlawful underpayment of an employee's remuneration inquiry on 18 September 2020.

The opening statement can be found [here](#) .

### **Responding to criticism in the Migrant Worker Taskforce Report**

The FWO observed that the [Migrant Worker Taskforce Report](#)  recommended that the FWO should raise its profile as a regulator and make more use of statutory enforcement tools such as compliance notices.

The FWO has responded to this recommendation, significantly lifting its profile as a regulator in the wage theft space.

### **Substantial action in the last financial year**

The FWO in the last financial year (1 July 2019 to 30 June 2020) increased its use of compliance notices by 250%. The FWO issued 952 compliance notices which recovered more than \$7.8 million in unpaid entitlements. The rate of compliance was 96%.

Infringement notices increased by 7%, with a total of 603 being issued.

There were less enforceable undertakings accepted however these undertakings recovered more than \$56.8 million in back-pay for workers.

The amount of litigation increased by 135%, with 54 matters being taken to court. The FWO has committed to maintaining this trajectory.

### **Significant increases in recovery of entitlements and penalties**

In the last financial year, the FWO's recovery of entitlements was the highest ever, with \$123 million being returned to more than 25,000 workers.

Courts ordered \$4.3 million in penalties with a record order of \$891,000 against three sushi outlets and their accessories.

### **Vulnerable workers**

The FWO is also using the Protecting Vulnerable Workers amendments (eg, reverse onus of proof for record failures, increased penalties for serious contraventions, etc) and commenced 15 actions on this basis. The FWO has secured penalties in three of those cases to date.

### **Educative role continues**

The FWO continues to perform its educative role, with a huge increase in demand during the COVID-19 pandemic. COVID content on its website has been viewed more than 5 million times since March 2020.

### **Priorities for 2020/2021**

FWO bares its teeth with systemic underpayments by large corporates a priority for 2020/21

The priorities for the FWO in the year ahead are:

- systemic underpayments by large corporates — noting that the FWO is currently investigating around 70 large corporates who have admitted underpayments;
- fast food;
- restaurants and cafes;
- horticulture;
- sham contracting; and
- franchise arrangements.

### **What to do?**

The focus on underpayments by the FWO continues and interestingly is now extending into industries that fall outside the traditional vulnerable worker sphere.

Audits must be conducted as a priority to ensure compliance with industrial instruments (ie, payment for all hours worked), worker status must be reviewed to ensure correct classification (ie, sham contracting) and franchisors and holding companies must take reasonable steps to ensure compliance with workplace laws in the supply chain.

See Guidance Note [Underpayments of entitlements](#), Guidance Note [Liability for underpayments](#) Guidance Note [Wage theft and private sector whistleblowers](#), Guidance Note [Employee/independent contractor distinction](#), Guidance Note [What are the general protections against sham contracting?](#), Guidance Note [Casual employment](#), Guidance Note [What measures are available to enforce the provisions of the federal workplace relations laws?](#), Guidance Note [Can franchisors and holding companies be held liable for breaches of the FW Act made by holding companies in their network?](#), the [Whistleblowers and wage theft — Corporations Act and Fair Work Act comparison tool](#) and the [Checklist for auditing for underpayments of employee entitlements](#).