

## Retail Fair Work case study

**Most employers are not HR professionals, so this can lead to them creating HR risk without them even knowing it.**

### Case overview

The operators of an Australian-themed retail outlet in Melbourne have been penalised more than \$120,000 for underpaying three shop assistants more than \$90,000 over five years.

The company has been penalised \$101,400 and its sole director, a further \$20,280 in the Federal Circuit Court in Melbourne following legal action by the Fair Work Ombudsman.

The company paid the employees flat rates as low as \$16 and \$17 an hour, underpaying their minimum hourly rates, weekend and public holiday penalty rates and casual loadings as prescribed by the General Retail Industry Award 2010.

In her judgment, Fair work Judge said the penalty should deter other employers in the retail industry from engaging workers at illegally low flat rates.

“There is clearly a need for general deterrence in this case in the sense that other employers do not adopt a flat hourly rate of pay in the retail industry.”

The business also failed to engage the employees for minimum shifts of three hours per day, failed to provide adequate meal breaks and failed to pay one of the employees her annual leave and leave loading on termination of employment.

The contraventions resulted in underpayments of approximately \$30,000 for each employee, resulting in a collective underpayment of \$91,238.

The underpayments were fully rectified by the business in December 2015.

Judge Hartnett imposed penalties equal to 26 per cent of the maximum penalties available because of the significant sums that were underpaid and because of Mr Kan's previous history with the Fair Work Ombudsman.

### Case facts

- The company has been penalised \$101,400 and its sole director, a further \$20,280
- The company paid the employees flat rates as low as \$16 and \$17 an hour, underpaying their minimum hourly rates, weekend and public holiday penalty rates and casual loadings as prescribed by the General Retail Industry Award 2010.
- Underpayments of approximately \$30,000 for each employee, resulting in a collective underpayment of \$91,238.
- Penalties equal to 26 per cent of the maximum penalties.

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### **What they should have done**

Correct award interpretation to ensure the staff are classified correctly so they receive at least the minimum entitlements

### **How Happy HR would have helped this business avoid the fair work claim**

With the help of Happy HR this store owner would have been advised that this was below the award rate and through a proper award interpretation they would have been able to classify the staff accurately.

The Happy HR system would have stopped any underpayments by setting up accurate pay rates per award classifications.

### **Happy HR ROI (based off a 50-person company)**

Fair Work penalty = \$131,680 = An equivalent of 44 years subscription with Happy HR! Plus countless hours saved on administration and in Fair Work!