

Risky Business

PART 2: “We Pay Above Award, So We’re Covered”

“We pay above Award, so we’re covered.”

It is one of the most common assumptions in employment.

The employee earns \$35 an hour when the Award says \$30. Or they’re on a \$90,000 salary when the Award minimum works out considerably lower. So, we’re paying them more.

Surely that means we’re compliant?

Maybe. But the number sitting next to **“Base Rate”** on a payslip isn’t the whole story.

And that extra \$5 an hour doesn’t automatically buy your way out of the rest of the Award.

[The Award isn’t just a minimum hourly rate](#)

This is where the misunderstanding often starts. Employers look up the Award, find the employee’s classification, check the minimum hourly rate and compare it with what they’re paying.

\$35 versus \$30. We’re good.

Except an Award can contain much more than a minimum rate of pay. Depending on the Award and the employee’s working arrangements, it can also regulate things such as:

- overtime;
- weekend and public holiday penalties;
- shift penalties;
- allowances;
- annual leave loading;
- minimum engagement periods;
- ordinary hours;
- breaks; and
- rostering arrangements.

So being \$5 above the minimum hourly rate tells you one thing. It doesn’t necessarily tell you whether the employee has received everything they’re entitled to.

[Let’s put some numbers around it](#)

Imagine an employee is entitled to a minimum Award rate of **\$30 per hour**. You pay them **\$35 per hour**. They’re \$5 above Award.

But now imagine they regularly work hours that attract overtime, weekend penalties or another Award entitlement.

The question is no longer: **“Is \$35 more than \$30?”** Of course it is. The question becomes:

“What would this employee have received under the Award for the hours they actually worked?”

And then:

“Does our pay arrangement legally and adequately compensate them for those entitlements?”

That's the calculation that matters. Because an above-Award rate can look generous in isolation and still produce a shortfall depending on the applicable Award, the hours worked and how the arrangement has been structured.

[“But their contract says the salary includes everything.”](#)

Good. Now let's look at what **“everything”** actually means.

Some employers use a contractual offsetting arrangement, where an above-Award salary or rate is intended to satisfy specified Award entitlements. These arrangements can be legitimate. But simply inserting a broad sentence into an employment contract saying a salary is “inclusive of all entitlements” shouldn't be treated as a compliance strategy.

You need to understand:

- Which entitlements is the payment intended to cover?
- Does the contract properly deal with those entitlements?
- Does the arrangement comply with the applicable Award and legal requirements?

And critically: **Is the employee actually receiving enough to satisfy those entitlements for the work they're performing?**

The wording matters. But so does the maths.

[Then there are annualised wage arrangements](#)

This is where terminology can become confusing.

An **annualised wage arrangement under an Award** and a **salary paid under an employment contract with a contractual offsetting arrangement** are not necessarily the same thing.

Some Modern Awards contain specific annualised wage provisions.

Those provisions can prescribe exactly how the arrangement must operate, including requirements around documenting which Award entitlements are being satisfied, how the annualised wage was calculated and, in some cases, recording hours and reconciling what the employee was paid against what they would have received under the Award.

Some Awards also place limits on the number of overtime or penalty hours that can be absorbed before additional payment becomes due.

So saying: **“They're salaried.”** doesn't answer the compliance question either. You need to know what arrangement you're actually relying on.

[Here's where businesses can get caught](#)

Let's say an employee commenced three years ago. Their salary was comfortably above the Award at the time. Since then:

- Their Award rates have increased.
- Their responsibilities have changed.
- They've started working longer hours.
- They regularly answer emails after hours.
- Their work pattern has changed.
- Perhaps they're now attending events or working weekends.

But their salary arrangement hasn't been reviewed since the day they signed their contract.

The business still thinks: **“They're well above Award.”**

Are they? Maybe.

But when was the last time anyone actually tested it?

[Salary doesn't mean "unlimited hours"](#)

This deserves its own mention. Putting someone on a salary doesn't create an unlimited-hours arrangement.

For Award-covered employees, applicable overtime and penalty provisions still need to be considered unless a lawful arrangement operates to deal with them.

There is also the Fair Work Act requirement that additional hours beyond 38 hours per week for a full-time employee must be reasonable.

So if your salary model only works because an employee routinely works significantly more hours than anyone has actually calculated, that's worth examining.

And there's another practical problem.

If you don't know how many hours your salaried employees are working, how do you know whether the salary is sufficient?

You can't test what you don't measure.

[The annual pay rise trap](#)

Here's another one.

"We gave everyone a pay rise last year."

Great. But Award minimum rates generally change following the Annual Wage Review.

As of 1 July 2026, Award minimum wages increased by **4.75%**. That means the buffer you had above the Award can shrink.

An employee who was comfortably above the relevant minimum several years ago may now be much closer to it. And if that higher rate is also being relied upon to compensate for overtime, penalties, allowances or other entitlements, that buffer becomes even more important. Above Award isn't a calculation you do once when someone starts.

It needs to remain above Award.

[Put your salaries through the Risky Business test](#)

Pick one Award-covered salaried employee in your business. Not your lowest-paid employee. Pick someone you're confident is **"well above Award."**

Then ask:

- What Award actually covers them?
- What is their correct classification?
- What is the current minimum rate?
- What other monetary entitlements could apply to the work they perform?
- How many hours are they actually working?
- What happens when they work overtime, weekends or public holidays?
- What does their employment contract say the salary compensates them for?
- What arrangement are we relying on to offset those entitlements?

And finally:

If we calculated what they would have received under the Award and compared it with what we've actually paid them, what would the result be?

If nobody in the business can confidently answer those questions, “we pay above Award” isn't giving you the protection you think it is.

Above Award is good. Knowing why you're compliant is better.

Paying employees above minimum rates is not the problem. Quite the opposite. The risk comes from assuming that because the headline rate is higher, there is nothing else to check. There may be. There may not be.

But you should know which one it is. Because the safest answer to:

“How do you know this employee has been paid correctly?” isn't: **“Because we pay above Award.”** It's: **“Because we've checked.”**

RISKY BUSINESS by HR Navigator

The everyday people practices that seem harmless...until they aren't.

At HR Navigator, we help small and medium businesses look beneath their employment arrangements and understand whether their Award classifications, salaries, contracts and actual working practices line up.

No generic HR. No HR jargon. Just practical advice that protects your business.



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