

Risky Business

PART 1: "We've Always Done It This Way"

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

"We've always done it this way."

It sounds harmless enough.

- Payroll has always been set up that way.
- Everyone starts 15 minutes before their shift.
- We've always paid that allowance.
- We don't pay overtime because they're on salary.
- They're casual because that's what their contract says.
- We just use the same employment contract and change the details.

And nobody has ever complained.

That last sentence is where businesses can get caught.

Because when it comes to employment compliance, something being done for years doesn't make it compliant.

Sometimes it just means the problem has been accumulating for years.

The elephant in the room

Most small and medium businesses aren't deliberately getting employment obligations wrong.

The bigger risk is often much less obvious.

Businesses grow. Roles change. Employees take on additional responsibilities. Rosters evolve. Managers come and go. Awards change. Pay rates increase. Legislation changes.

But the employment arrangements sitting underneath all of that?

They don't always change with them.

- An employee who was correctly classified three years ago may be doing a substantially different job today.
- A casual who originally worked irregular shifts may now have a very different working arrangement.
- A salary that comfortably exceeded Award entitlements when it was introduced may never have been reviewed against the employee's current hours and entitlements.

And that contract everyone has been using?

It might have been perfectly appropriate when it was drafted. That doesn't mean it still is.

"We pay above Award."

This is one I hear regularly. And paying above Award is certainly better than paying below it. But "above Award" isn't a magic phrase that makes every other entitlement disappear.

Depending on the Award and the arrangement, you may still need to consider overtime, penalty rates, allowances, minimum engagement periods and other entitlements.

If you're relying on an above-Award rate or salary to satisfy Award entitlements, you need to understand what that payment is intended to cover and whether the employee is actually receiving at least what they would otherwise be entitled to.

So instead of asking: “Are we paying them more than the Award?”

Ask: “If we had to prove this employee had received everything they were entitled to, could we?”

That's a much better compliance test.

“Payroll takes care of that.” Maybe. But your payroll system doesn't decide whether you've classified an employee correctly. It doesn't necessarily know that someone regularly works through lunch. It doesn't know a manager expects their team to arrive early unless those hours are recorded. And it doesn't know that someone's role has evolved beyond the classification entered into the system two years ago.

Payroll software can calculate exactly what you've told it to calculate. If the information going in is wrong, it can automate the wrong result very efficiently.

Fortnight after fortnight. Employee after employee. Year after year. That's when a relatively small issue can become a very expensive one.

The stakes have changed

Since 1 January 2025, intentional underpayment of wages and entitlements can constitute a criminal offence under the Fair Work Act.

That doesn't mean an honest payroll mistake makes a business owner a criminal.

But it does reinforce something important: Businesses need to take wage compliance seriously.

For small businesses, the Voluntary Small Business Wage Compliance Code also provides an important framework. It considers whether employers have taken reasonable steps to determine correct pay rates and entitlements, stay informed about their obligations and rectify underpayments when they are identified.

There is a significant difference between making a genuine mistake despite taking reasonable steps to get things right and simply never checking.

Then there's the paperwork

Here's another uncomfortable question:

If you had to prove it tomorrow, could you?

Employers are required to keep various employment records, generally for seven years.

So, if an employee questioned something that started four years ago, could you establish:

- what hours they actually worked;
- what Award applied;
- what classification they were under;
- whether overtime or penalties applied;
- what allowances they were entitled to;
- what they were paid; and
- what their employment arrangement was at the time?

Because “**I'm sure we paid them correctly**” and “**here are the records demonstrating they were paid correctly**” are two very different positions.

Try the tomorrow test

Imagine Fair Work contacted your business tomorrow. Not because you've necessarily done anything wrong. They simply want to understand your employment practices.

Could you confidently explain why every employee is:

- classified the way they are?
- paid the rate they're paid?
- engaged as full-time, part-time or casual?
- Could you show that actual hours worked are being captured?
- That overtime, penalties and allowances have been considered?
- That your contracts reflect what is actually happening?
- That your payroll settings align with the applicable Award?

If you're thinking:

"Probably."

"I assume payroll has that."

"Our accountant looks after it."

or the old favourite...

"We've always done it this way."

You may have found your first HR blind spot.

Risk doesn't always announce itself

That's what makes these issues dangerous. There isn't necessarily a flashing warning on your payroll system. There may be no employee complaint. There may be no dispute.

Everything can appear to be working perfectly. Until somebody looks underneath it.

A compliance review might find nothing significant at all. Or it might uncover an outdated contract, incorrect classification, missing allowance, payroll configuration issue or working arrangement that has gradually moved away from what was originally agreed.

Either way, wouldn't you rather know?

Because finding and fixing an issue yourself is a very different situation from discovering it after an employee complaint, Fair Work enquiry or significant back-payment calculation.

The bottom line

"We've always done it this way" explains how a practice started. It doesn't tell you whether it's still right.

And sometimes the biggest HR risks aren't hiding in complicated legislation.

They're sitting in the processes everyone stopped questioning years ago.

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 identify employment risks before they become expensive problems.

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



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