

## Use of Salaries for Employees covered by Modern Awards

The use of annualised salaries, incorporating base wages and other provisions such as leave loading and in many cases overtime, have traditionally been used by many employers particularly in the area of "white collar" employees.

With the introduction of modern awards from 1 January 2010 it is timely to clarify the requirements of employers if they wish to do so.

### Annual Salary in Place of Individual Award Provisions

Some modern awards (such as the *Clerks – Private Sector Award 2010*) contain specific provisions in relation to annualised salaries. Generally speaking however, annualised salaries or all inclusive hourly rates are permitted as a means of administering award obligations unless expressly excluded.

In many cases the employer and an employee may agree on an annual salary or all-inclusive hourly rate in satisfaction of any or all of the following award provisions:

- minimum weekly wages;
- allowances payable;
- overtime;
- shift loadings and penalty rates;
- annual leave loading.

### Requirements for Introducing an Annual Salary to Administer Award Provisions

The following is provided as a general guide for the correct implementation of annual salary or all inclusive hourly rates where an Award applies to the employee's employment:

1. Where an annual salary is paid to an employee, the employer must advise the employee in writing of the annual salary that is payable and which of the Award provisions will be satisfied by the payment of the annual salary.

Where it is proposed that the annual salary will include consideration for some amount of expected overtime or shift penalties, the amount of overtime or penalty should also be specified. For example:

*"Your annual salary is all inclusive and is intended to cover the following monetary obligations under the Award... working up to //insert// hours of overtime per year at the applicable Award overtime penalty."*

2. The annual salary must be no less than the amount the employee would have received under the Award (for all relevant provisions) for the work performed over the year for which the salary is paid. This will require an initial calculation of the amounts the employee may be expected to earn by applying the various Award conditions to the hours that are expected to be worked. In most cases a yearly reconciliation should be conducted and communicated in writing to the employee to confirm that the salary paid to the employee has satisfied the Award conditions.
3. Time and wages records must still be maintained in accordance with the *Fair Work Act 2009* and the Award.



4. Entering into a salaried arrangement does not remove the employer's Award obligations or vary them. It simply is a method of administering those obligations in a way that is agreed with the employee.

### Implications for Superannuation

Clients need to be aware that when certain payments become fixed in a salary, their character for the purposes of what are ordinary time's earnings ("OTE") when calculating superannuation contributions may change. For example, overtime payments may become OTE when incorporated in a salary. These issues need to be monitored and evaluated to ensure that the correct contributions are made.

### Require further Information/Assistance?

Contact your local consultant at either our Adelaide or Melbourne office on the phone numbers noted below.

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