

Criminalising Wage Underpayments

Practical example



In 2022, Joe and Paul **set up** a **company** trading under the business name 'JP Gardening'.

When Joe and Paul were setting up their company, they **received advice** that the **minimum hourly rate** under the applicable **Modern Award** was \$24.00.

It is now **2 February 2025**, and Joe and Paul are **unaware** that the **minimum hourly wage** under the **Modern Award** has **increased**.

Joe and Paul **are still paying their employees a minimum hourly rate of \$24.00** (despite it since having raised to \$26.00 per hour).

Any **claim** in relation to the underpayments **may be pursued** by the **impacted employees, any union or industrial organisation** entitled to represent the employees **and/or the Fair Work Ombudsman**.

What happens next?

In this scenario, Joe and Paul **may be exposed to liability in a civil sense** (i.e. a claim to rectify any underpaid amounts owed to employees due to the incorrect minimum rate of pay being applied) but **it is unlikely** they would be **at risk** of being found to have **committed the criminal offence** of wage theft as **they did not have the necessary intention**.





SMALL BUSINESS PEAK

A large white arrow graphic pointing upwards and to the right, with the text 'SMALL BUSINESS PEAK' integrated into its path.

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