



# HR Compliance Health Check

Answer the following YES or NO questions. Once you've completed all of them, turn to the answer page to learn if your business has any red flags or issues you need to be aware of.

**Question 1: Are you aware of the Modern Award(s), if any, which apply to your business?**

Yes      No

**Question 2: Are all your employees issued with an employment contract?**

Yes      No

**Question 3: Are you aware of any Modern Award requirements with respect to annualised salary arrangements which apply to your business?**

Yes      No

**Question 4: Have you undertaken an annual review of your employees' salary or wages to ensure no underpayment has occurred?**

Yes      No

**Question 5: Are your casual employees paid a casual loading and does this appear as a separate identifiable amount on their pay slip?**

Yes      No

**Question 6: Have you issued casual employees with the Casual Employment Information Statement?**

Yes      No

**Question 7: Are you aware of your casual conversion obligations and what steps you must undertake to comply with legislation?**

Yes      No

**Question 8: Does your business have an up-to-date working from home policy in place and is a risk assessment completed before an employee begins working from home?**

Yes      No

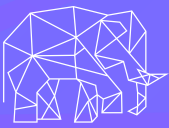
**Question 9: Do you provide pay slips to your staff within one working day of being paid?**

Yes      No

**Question 10: Do you issue all employees with the Fair Work Information Statement upon commencement of employment?**

Yes      No





Question 11: Are employment records kept for a period of at least seven years?

Yes No

Question 12: Do you have an up-to-date Employee Handbook?

Yes No

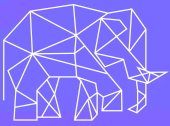
Question 13: If you pay your employee an annualised salary or above award wage does their employment contract include an off-set clause?

Yes No

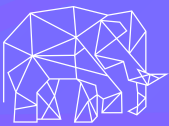
## Answer page and score card

For each correct answer score 1 point and for each incorrect answer minus a point.

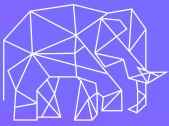
|   | Answer  | Score |
|---|---|-------|
| 1 | <p>If you answered NO to this question, you may be at risk of an overpaying employees or an underpayment claim.</p> <p>Classifying employees under the correct Modern Award is crucial to ensure that employees receive their rightful minimum entitlements.</p> <p>Modern Awards set out the minimum terms and conditions of employment on top of the National Employment Standards. An employer cannot provide employment conditions that are less favourable than those set out in the relevant Award. The two most common types of Modern Awards are industry-based Modern Awards and occupational-based Modern Awards. To determine whether an Award applies to your employee, you must first consider whether an industry Award covers your business and then look to see if your employee fits within the classification structure of that Award.</p> <p>If no industry award covers your business, it may be that an occupational award will cover your employee's position. It is important to classify your employees under the correct Modern Award, as failure to do so may give rise to an underpayment claim.</p> |       |
| 2 | <p>A contract of employment is a crucial factor of an employment relationship, as it outlines the employee's terms and conditions of employment. It is particularly important that casual employment contracts are issued and clearly define the engagement in line with the new statutory definition of casual employment to mitigate any risk that the employee is classified incorrectly.</p> <p>A tailored contract of employment will significantly assist the business in all areas of their people management responsibilities.</p>  |       |



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| 3 | <p>Many Modern Awards have specific requirements regarding annualised salary arrangements. This often includes having a written agreement with an individual employee that they will be paid an annualised salary in accordance with the applicable Modern Award.</p> <p>In that written notice, the employer must include details of:</p> <ul style="list-style-type: none"><li>• The annualised wage that is payable;</li><li>• Which of the provisions of this award will be satisfied by payment of the annualised wage;</li><li>• The method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and</li><li>• The outer limit number of ordinary hours which would attract the payment of a penalty rate under the award, and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage.</li></ul> <p>The Modern Award provisions place strict recordkeeping obligations on employers, including the requirement to keep hours of work records.</p> <p>Annualised wage provisions in Modern Awards also require the employer to undertake annual reconciliations of employees' wages to ensure there is no underpayments arising. If there is any shortfall, the employer must rectify the underpayment within a specified time frame.</p> <p>These provisions may vary between Modern Awards. Employers must ensure they refer to the applicable award to ensure compliance.</p> |  |
| 4 | <p>Employers are strongly encouraged to undertake an annual review of employees' salaries to ensure no underpayment has occurred. Where an employee is paid an annualised salary under a Modern Award which contains annualised salary provisions, this is an annual obligation and must be undertaken.</p> <p>Even if your employees are not paid a salary, it is still recommended that employers undertake this process on a regular basis to avoid risks of non-compliance with minimum wage obligations.</p> <p>Typically, minimum rate of pay is increased in the first full pay period in July of each year. Employers should undertake a review at this time to ensure that:</p> <ul style="list-style-type: none"><li>• An employee's salary remains compliant against the increase rate of pay and allowances;</li><li>• An employee's hourly rate of pay and allowances remain compliant; and</li><li>• The base rates of pay specified within an enterprise agreement are at least equal to the increased rates.</li></ul>  |  |
| 5 | <p>Casual employees are entitled to be paid a loading of 25% in lieu of permanent employee entitlements such as annual leave. It's important that casuals are paid a separately identifiable loading on account of their casual status.</p> <p>It is recommended that this is reflected within an employee's contract of employment and payslip.</p> <p>Under recent amendments to the <i>Fair Work Act</i>, the casual loading payable to an employee must be clearly identifiable if an employer wishes to utilise the casual loading offset provisions contained within the Act.</p>   |  |



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| 6  | <p>Under recent amendments to the <i>Fair Work Act</i>, all new casual employees are to be provided with a copy of the Casual Employee Information Statement before, or as soon as practicable after the employee commences employment.</p> <p>In addition to this, for those employees who are currently employed under a Modern Award which contains a Casual Conversion clause, the obligation to provide a copy of the clause to new casual employees within 12 months of commencement remains. That being said, the Fair Work Commission is currently undertaking a review of all Modern Awards which contain a casual conversion clause and as such it is possible that this obligation will change in the near future. HR Assured will provide an update on its website when this happens.</p>   |  |
| 7  | <p>The Fair Work Amendment (<i>Supporting Australia's Economic Recovery</i>) Bill 2020 came into effect on 27 March 2021. The Bill now requires employers to:</p> <ol style="list-style-type: none"><li>Identify casual employees who have 12 months of service</li><li>Undertake a preliminary assessment to determine if the employee has been employed on a regular and systematic basis for at least the last 6 months;</li><li>If so, consider if the Company can offer the employee permanent employment. Note: the Company can only refuse to do so on reasonable business grounds; and</li><li>Communicate the offer or refusal, in writing, within 21 days of the anniversary.</li></ol> <p>There is a transitional period which ends of 27 September 2021 to allow employers time to prepare. The above tasks must be undertaken by this date. HR Assured has prepared a casual conversion checklist and flowchart which you can access <a href="#">here</a>.</p> |  |
| 8  | <p>Employers have an obligation under Work Health and Safety Legislation to do whatever is reasonably practicable to ensure the health and safety of their employees in the workplace. The "workplace" is known to be any location that an employee is required to perform their duties from, including working from home. Working from home is a particularly common occurrence in the current environment to help minimise the spread of COVID-19. Risk assessments should be undertaken before any working from home arrangement is entered into in order to satisfy an employer's work health and safety obligations.</p>   |  |
| 9  | <p>Section 536 of the <i>Fair Work Act</i>, states that employers must provide employees their pay slip within one working day of being paid, even if the employee is on leave. Failure to do so may result in significant fines and penalties.</p>   |  |
| 10 | <p>An employer is required to issue a copy of the Fair Work Information Statement to all new employees. Failure to do so may result in significant fines and penalties.</p>   |  |
| 11 | <p>Section 535 of the <i>Fair Work Act</i> employers must keep employee records for seven years. Failure to do so may result in significant fines and penalties.</p>  |  |
| 12 | <p>An Employee Handbook is considered an important document which should include all policies and procedures relevant to an employee's employment. An employer is able to refer and rely on the policies within the Employee Handbook in the event of a legal dispute between the company and an employee. If an employer can point to a policy to show that the employee ought to have been aware of their responsibilities in relation to the disputed matter, the employer is likely to be in a much stronger position before a court or tribunal.</p>   |  |



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| 13                   | Where employees are paid an annualised salary or an above award rate of pay, employment contracts should include an off-set clause which explicitly states that the over-Award payment is directed towards satisfying all Award monetary entitlements that may arise. That is, an off-set clause is used to negate other Award monetary entitlements such as overtime or penalty payments. In the absence of an off-set clause, despite being paid a wage in excess of the minimum Award rate, the employee may have grounds to claim for unpaid Award monetary entitlements. |  |
| <b>TOTAL POINTS:</b> |   |  |

## How did you score?

### **1-7 points: High risk of non-compliance. Action is required.**

Your business is at risk of non-compliance and would benefit from a full HR compliance audit to uncover any major mistakes, vulnerabilities or issues when managing or paying your employees. This is something the team at HR Assured can assist you with. Our expert auditors will uncover risks and threats to your business due to incomplete, incorrect or missing processes. We'll hunt down anything and everything that could expose you to penalties for failing to comply with Modern Awards, EBAs, the Fair Work Act 2009 (Cth), Work Health and Safety, and other governing legislation in Australia.

### **8-9 points: There's always room for improvement.**

While you scored well, it looks like there are some areas in your business that need to improve. Employment relations is tricky, and legislation can quickly change. We suggest taking action now before any major issues occur. The first step to protecting your business is to complete a full HR audit. If you don't have an in-house counsel with expert knowledge of employment law, it can be difficult to know if you're complying, or if your practices and procedures are best practice. Talk to the team at HR Assured to learn about how we can support your business.

### **10 points: You're an HR Rockstar!**

Well done, it looks like you got a perfect score. Whilst this HR Health Check makes you look like an HR Rockstar, we do want to point out that this is a basic HR audit and it doesn't uncover all potential risks and threats to your business. To learn if your business is 100% compliant, it's a good idea to undertake an in-depth HR audit. If you would like to discover how HR Assured can assist you with this, contact us.

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