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WAGING A WAR AGAINST
WAGE THEFT

AUTHORS

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EXECUTIVE SUMMARY

1. INTRODUCTION

The term 'Wage Theft' has made its way into the media and discussion groups as an all-encompassing term relating to any non-compliance with the Fair Work Act (FWA) that has resulted in an employee not receiving what they are entitled to.

This raises the question on whether one harsh term can, in fact, be used to cover the broad range of scenarios that actually cause these non-compliances. The term "theft" based on the basic legal definition in Australian Law implies an intent for the [employer] to deprive the person of their entitlement, which is just not the case for the majority of employers.

While it seems like this is a new issue, it is something that has existed for some time. Employers have been identifying mistakes, be it related to people, process or technology, and either correcting them internally or, where more significant, self-reporting to the relevant governing body and entering into a mutual arrangement for the corrections to take place. However, the increase in media coverage in recent times has led to employers being, perhaps in some cases unfairly, tarnished with the same brush.

In our experience, the issues can generally be grouped into three levels of severity.

STANDARD – GENUINE MISTAKES

This is by far the most common scenario. Many employers unintentionally make mistakes in a variety of areas. In a lot of these cases, the value of overpayments is similar, if not greater than the value of the underpayments that are often the focus of the media coverage.

These mistakes can be the result of several issues, often happening all at once including complex scenarios in the industrial instrument, poor system maintenance or a lack of knowledge and understanding to keep up to date with legislation changes.

Often, these mistakes are identified by the employer themselves and, where necessary, self-reported.

Unfortunately, a large portion of genuine mistakes are because of; poor processes, technology that has not been set up nor maintained correctly, and a general under investment in payroll resourcing.

SERIOUS – KNOWING AND SYSTEMATIC

There are, however, some businesses who know that they have issues within their payroll or HR practices and either choose to ignore them completely, or only address specific issues raised on an individual basis. In these scenarios, the employer often waits to be directed by the governing body to make corrections to individuals.

While these errors generally start out as genuine mistakes, it is the choice of the employer to not correct the issues, or not correct them in a timely and comprehensive manner that makes it more serious.

This choice can be because the issues are deemed 'too hard' to fix, too expensive to fix, or the business just lacks the resources and knowledge to be able to navigate the situation effectively. The choice can also be the result of embarrassment of a person or team within the business not wanting the 'admit fault' and instead attempting to sweep it under the table.

These scenarios often also have overpayments that occur, but when identified, these are often resolved with much more urgency lessening the overall value of these errors.

CRIMINAL – INTENT OR 'THEFT'

The most serious type of error is where the employer actively engages in a process or system to purposely reduce the entitlements of employees to gain an advantage (whether financial or other). This could be done to create a competitive advantage in commercial contracts, or it could be direct exploitation of workers, especially in more vulnerable employee groups such as the young, under-educated or foreign workers.

Where these cases are uncovered, the level of intent can be difficult to determine as they are often implemented over several layers of a business. Once the intent is determined, the discussion should rightfully move towards that of criminal actions, or theft.

Where there is intent or exploitation involved, we cannot rely on self-reporting. Only strong regulation and enforcement strategies can address these issues. Strong whistle-blower policies are important to help identify these cases, but without enforcing harsh penalties to act as a deterrent to individuals and businesses, these will continue to happen.

2. CHALLENGES

IR COMPLEXITY

While there are many improvements to the volume of Industrial instruments over the years, the complexity of the relationships between the different tools continues to be a major influence on the volume of pay errors. While Australia is far from the most complex payroll environment, the relationship between the different areas of state and federal legislation and the frequency of major changes are still an issue.

In addition to complexity, a large portion of Enterprise Agreements are developed without any consultation with Payroll. This lack of involvement usually results in Payroll not fully understanding the intent and the business not being made aware of how Payroll will or will not be able to manage the translation of the instruments to payments.

LACK OF SUPPORT AND CLARIFICATION FROM FWA

One of the key functions of FWA is to provide education, assistance, advice and guidance to employers, employees, outworkers, outworker entities and organisations.

Obtaining assistance from FWA on interpretation related matters has not always proven to be successful. In some cases, the advice offered has contradicted widespread industry practices.

Any reasonable person would expect the FWA to understand each award intimately and be able to provide direction where required.

MEDIA COVERAGE

What most likely started as a new story to expose a large company or celebrity has now snowballed into breaking news. If you are incorrectly paying your employees, it is not a matter of "if", but "when" you will become the next news headline.

Whilst the media has helped shine a light on this issue and raise the profile of the importance of Payroll, it doesn't fully understand all the issues nor does it understand the difference between genuine mistakes and criminal intent.

What the public hears is: "Your employer has stolen your hard-earned money" and the backlash from the public via social media is swift and unkind.

THE ROLE OF UNIONS/ EMPLOYEE REPS

While we would like to think that all the employee groups and unions are helping to make sure that employees and employers are working together to maintain better than minimum conditions for workers, the sad reality is that not all unions have always acted in this way.

In 2016, the Retail and Fast Food Workers Union (RAFFWU) was set up in response to a series of enterprise agreements drawn up with the sector's traditional and conservative union — the Shop, Distributive and Allied Employees Association (SDA) — and big employers such as Coles, McDonalds and Woolworths. It was reported by the secretary of RAFFWU in 2018 that the Woolworths' agreement was approved because the Fair Work Commission relied on misleading material from Woolworths and the SDA.

A new agreement was later renegotiated with the major retail groups and legal action was reported to be taken in response to the previous agreements[1].

When employers are not able to trust enterprise level agreements that have the support of the relevant unions and approved by the FWC, it creates an environment of misunderstanding, misinterpretation and confusion for everyone as to what the "right" entitlement should be.

3. RISK MITIGATION

Every payroll function should have a risk management plan. The risk management plan should be a key responsibility of your payroll leader. The plan needs to be reviewed annually and linked to your payroll leader's performance plan.

The plan needs to include a list of identified risks, probability/impact ratings and mitigation plans. In addition, the plan also needs to include control testing/frequency, where you test the mitigation controls. This ensures the robustness of the mitigation controls and provides the business with "proof" that the controls are working.

PEOPLE

People are your most important asset when it comes to creating a truly successful payroll function. It all starts with hiring a payroll leader who can lead the function and not simply become a leader who supervises transactional operations. Payroll leaders should spend 80% of their time leading and 20% of their time on transactional related activities.

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[1]Stephen Letts, "Woolworths faces union legal action to scuttle EBA and get $1b in backpay," ABC News, August 23, 2018, https://www.abc.net.au/news/2018-08-23/union-lauches-woolworths-action-for-a-billion-in-backpayments/10155544

Most payroll leaders are required to spend a large portion of their time in the detail and this does not leave sufficient time for them to ensure your payroll function is compliant with awards/legislation.

Payroll leaders should be focusing on strategy, systems, processes, risk management and business collaboration. They should not be entering timesheets or processing payrolls.

Prior to hiring a payroll leader, ensure you have a position description that clearly articulates the role and responsibility as well as the key performance indicators that will apply.

Once your payroll leader is onboard, ensure their performance plans accurately reflect and track the targets you have set, including developing and maintaining the risk management plan.

SYSTEMS

Whenever payment errors are discovered, you will generally see people point the finger at the systems. Systems are only as good as the people you employ to maintain them.

Many companies install systems on the assumption that they are fully automated and will take care of themselves. The entire notion of "Set and Forget" simply does not exist, nor does the term "Fully Automated."

There is currently no system in the market that can fully manage your payroll without an expert team of payroll professionals supporting it.

Most system issues relate to incorrect set up and maintenance, missed upgrades, and a lack of understanding of system capabilities. Your payroll leader should have a complete understanding of what your system limitations are and where manual work arounds are required to compensate for those limitations, and must ensure these are well documented and reviewed for new solutions with the system vendor regularly.

System maintenance, manual workarounds and sensitive system areas such as leave accruals and superannuation should be included in the risk register with testing at regular intervals, after every upgrade and after any significant change.

INTERNAL REVIEW

A key component of the risk management plan is to develop a control testing regime. We like to call this the annual payroll health check.

The health check should review sensitive system processes, such as Superannuation Rules/Calculations, and processes relating to award increments due to birthdays or tenure. The plan should outline how to test the health of the process, the frequency of the check and the documentation (evidence) required.

EXTERNAL REVIEW

The output from the payroll, generally referred to as a health check should be reviewed by an external party on a regular basis. Someone apart from the payroll leader should also be reviewing the results of this annual check.

This could be by your internal/external audit teams or someone else with the appropriate level of knowledge of these processes internally.

If using an external consultancy firm to assist in a review, be sure their primary focus is on Payroll process and systems, not just financial or HR auditing in general.

4. IMPACT

PENALTIES AND COST

Where an employer deliberately or systemically underpays wages and/or superannuation, there are financial penalties that can be applied. There is also a push to criminalise these types of underpayments.

In some cases, the financial penalties applied are minor in comparison to the total value of unpaid wages/super. In other cases the value of the penalties can be multiple times more than the value of the actual shortfall to employees, potentially crippling an employer.

In addition to this, we are starting to see the call for civil class actions as a result of underpayments which will have their own financial costs.

BRAND/REVENUE IMPACT

Having your brand associated with wage theft will have varying levels of impact, depending on the size of the business. You can certainly guarantee an immediate backlash from your customers via social media.

A larger well-established business may cop flak on social media from its customers but typically the impact to its revenue is very minor.

On the other end of the scale, those small-medium sized businesses in less stable industries, such as hospitality, will tend to suffer more, as we recently saw with the George Calombaris restaurant group who attribute the closure of the group to the result of the brand impact from the reporting of their underpayments.

Consideration also needs to be given to the longer lasting impact such as reduced staff moral/trust as well as reduced productivity. Employees that think they are being ripped off are most likely going be less engaged with the business for quite some time.

Whatever the cause of underpayments, it is important to understand that the damage is nearly always borne by the employer, and not the software vendor or outsource company.

ACCESSORIAL LIABILITY

Under section 550 of the Fair Work Act 2009, a party implicated or involved in a contravention of the civil remedy provision will be treated as having also contravened the Act and be liable to pay a penalty.

Accessorial liability can apply to individuals within an organisation, such as Payroll Professionals or HR Managers as well as those in up and down stream supply chain, including vendors you have engaged to provide you with outsourcing services.

This section of the Act also includes provisions where you can be held personally liable for indirectly not doing something. You can no longer simply turn a blind eye to a known issue.

5. FAULT

So who is to blame for these errors when they happen? Depending on who you talk to, you are likely to get a different response. But really, the whole of an organisation plays a part along with software vendors and up/ down stream service providers when they are being utilised.

PAYROLL

Payroll is the easy go-to for a lot of the blame, usually because they are the last touch-point for the issues. It is payroll that puts the funds in the bank, and generally payroll that manages and maintains leave entitlements. But payroll is one of the few areas that require no formal qualification to be responsible for what is nearly always the biggest expense within a business.

We are starting to see the introduction of specialised training through professional associations, but this is still not a requirement within most organisations for members of the payroll team, including a payroll manager, leaving the payroll team ill equipped with all the skills they need to manage the entire payroll function.

We see in many organisations a payroll manager is often "the payroll person who has been there the longest" and has not always had the opportunity for professional development.

Consider that alongside the reality that it is often the responsibility of the payroll team, rather than the tertiary educated HR and Finance professionals to interpret the abundance of legislation, industry standards, business practices and system configuration and you start to see how big the gap is.

The joke used to be that payroll wears two hats, HR and Finance, but in the modern age, that has been expanded to also include Project Management, System Development, Data Analytics, Operations and, in some cases, even injury management. That's a lot of hats!

In some industries such as retail and manufacturing, we are seeing a return to decentralised payroll services. This sees critical functions such as rostering, time & attendance and award interpretation being decentralised, often to operations teams who have very limited understanding of what is required to ensure employees are paid accurately and receive even less training in this area.

HUMAN RESOURCES

Human Resources (or as it is now more often referred to, People and Culture) are often the first touch-point of an employee's life-cycle with an employer. It is the HR team that issue the contracts and should be relied upon to ensure that the applicable industrial instruments and legislation has been correctly applied to an employee based on their role.

Incorrect contracts or instruments can be the first point where things start to go wrong, so it is important for the HR teams responsible for onboarding new or transferring employees to have sufficient understanding to get this right every time, and to understand the implications of getting it wrong.

FINANCE

While it is easy to discount finance professionals from this issue, when it comes to understanding tax legislation, it is the finance team that are best placed to provide guidance for the business. Superannuation Guarantee is an ATO managed legislative instrument and therefore is generally covered by finance rather than HR training. While finance may not be directly involved in the processing of payments to employees, their support to the payroll team is vitally important.

SYSTEMS

A system is only as good as the people that tell it what it should be doing, but it is not always that simple.

Despite having a solid review plan and schedule to make sure that system updates are being applied and tested, and configuration reviewed to ensure it is up to date, we still see issues with either fundamental system parameters (those that are done at the code level) or vendors who do not provide the correct professional support for their clients. And what if they get it wrong? The fault is attributed to the client as they are ultimately responsible.

The introduction of Single Touch Payroll (STP) highlighted the massive gap between different products to be able to adapt and implement the solution within their product, but beyond being "STP Enabled" there exists no requirement for a payroll system to hold any certification that it meets minimum set up standards.

We still come across systems that would fail a compliance test based on simple requirements (incorrect tax calculations, inability to administer statutory leave requirements, basic statutory reporting requirements) and this only addresses the payroll solution. If you incorporate an award interpretation module, either with or without automated time and attendance then there is another layer of basic configuration to be considered.

Being able to work with a vendor who shares your vision and who understands the importance to work together is so important.

OUTSOURCING PAYROLL

Many organisations in the Australian market are looking internationally for opportunities to reduce overhead costs. Often this will include the option to outsource the payroll functions for medium and large organisations to companies within Australia, or to overseas providers. Unfortunately, while this seems to work well and provide good value for money in some countries, in the Australian market this generally does not provide as much economic gain for a business.

Ultimately, the business remains responsible for ensuring that the payroll is correct and that payments are being made in line with the applicable legislation. Most payroll outsource providers are only offering data processing services and the payments are based on a pre-determined and rigid set of criteria. In these cases, the business still needs skilled people to communicate the required information to these providers which often results in a similar internal resource requirement. This means that if the internal process is not working and if you have payroll issues, those issues will follow through to the outsource provider, and are often magnified through the arm's length arrangement.

If these businesses instead spent the time to understand and address some of the internal challenges of the payroll function and engaged a quality software vendor, they can save more through targeted automation of the data processing within the system and focus their resources on highly trained and qualified payroll professionals.

There are times when outsourcing payroll can help. For example, small businesses or those with very simple payroll environments where it is not cost effective to internally engage a team of highly skilled payroll professionals. In these cases, engaging a full payroll service provider can gain access to highly qualified professionals and have continuity of service, but you must ensure that the partner you choose to work with shares your business visions, have the right service model for you, and that you both clearly understand the role that each of you have and what you are actually paying for.

6. REMEDIATION

RETROSPECTIVE REMEDIATION

Remediation is a highly complex process with many moving parts. As with most things, prevention is far better than the cure and that applies to remediation.

Remediation in simple terms means to go back in time and re-process each payment correctly and compare it to what was actually paid. It's a *Was Paid vs Should Have been Paid* calculation.

The challenge with remediation is that it needs to take into account the status of the employee at the time of the calculation. In some cases, consideration needs to be given to things like the employee's age/tenure (for award increments), classification (did they change part way through a pay period), award rates (did they change from one year to the next) and special allowances (were they on HD at time)?

This process is made even more complicated for employees on individual agreements/ contracts which may have changed over time or have been grandfathered. All these calculations take a lot of time to be made and should include checking and audit controls applied to the process.

GO FORWARD PROCESSES

Before you embark on a remediation project, consider correcting the issues to prevent further incorrect payments. If you do not correct the issue now, you will continue to incorrectly pay employees and your remediation project may go on indefinitely.

It is also important to take some time to fully understand the implications of changes you intend to make to your systems or processes before you make them. Often a rush to 'fix' an issue creates more issues than it resolves due to interdependencies. In other examples, the long-term fix is outside of the control of payroll systems and processes and requires the business to change certain practices, such as rostering, to be able to resolve.

Throughout the remediation process, having a well thought out internal and external communication plan is vital. Remediation can take time and managing the expectations of the current and former employees impacted by the change can make a huge difference in restoring trust and respect among your employees.

COST

Employers typically fail to account for the cost of remediating underpayments. In most cases, remediation requires entire pay runs to be re-calculated over many financial years. This work involves large amounts of data and specialist systems to assist in the retrospective calculations.

Due to the complexity of remediating underpayments, companies tend to call in consultants. The consultants work with an internal project team to recalculate past payments and determine any unders or overs.

This process typically can take many months and cost hundreds of thousands, if not millions of dollars to resolve. The overall cost of remediating is typically far more expensive than it would have been to equip payroll with the right technology and resources in the first place.

Remediation is also a process that can take many years to fully complete. Resolving under payments not only applies to current employees, but also past employees where you will be required to make a reasonable effort to contact.

RAMCO'S PERSPECTIVE

A huge part of the solution comes from a holistic system that can address crucial aspects which directly or indirectly lead to the problem of wage theft and other payroll inconsistencies or fraudulent practices. Ramco Systems helps in overcoming these hurdles with a well-rounded and complete solution that can provide:

1. Schedule Management - Paying people correctly starts with having the data points on when they arrived at work, when they left work and if they took an unpaid break. Ramco Time Management provides a simple and intuitive interface that would help to schedule employees, record their attendance, and calculate their normal and overtime working hours.

2. Ramco Policy Configurator - Ramco has created a highly intuitive and visual tool called Policy Configurator. This tool can handle the complex task of handling and interpreting Employee contracts effectively. Parameters for compliance limits can be defined. The overtime rules and updated time data can be set up in the system itself, which moves seamlessly into Payroll system for processing. Without any major manual intervention, receive the time data on the system; specific rules as per agreements and awards are applied and the time entry is reconciled.

3. Statutory Compliance - Ramco Payroll engine offers statutory compliance for ANZ (Superannuation Guarantee and Fair Work Act, Income Tax Act, Holidays Act, 2003) on its own platform through localization framework, consisting of country specific rate tables, statutory pay elements and statutory reports. Ramco has an established Payroll Bureau team supporting the development team with their in-depth research on existing and new country requirements. Flexibility of the payroll engine and expertise of the Payroll Bureau team provides necessary inputs for adding features and statutory updates for relevant countries.

4. AI/ML - Ramco is integrated with Artificial Intelligence (AI), Machine Learning (ML) and Robotic Process Automation (RPA) capabilities. The entire payroll processing can be automated and pre-scheduled. Ramco's Net Pay Anomaly Detector powered by Machine Learning can analyze historical data spanning across years in a fraction of time to spot payroll anomalies. The Error Detection lets the payroll admin to understand the variances in previous Time Period and the Current Pay Period. The system also highlights the contributing factors based on average, maximum and minimum as base values.

5. Compliance Status Dashboard - This is to keep the track of country, state or region level compliance status for the selected compliance Category. Further, it certifies the compliance level of the country level compliance, on the basis of selection of Country, State and Region, Compliance Category, Frequency and Compliance Status.

6. Transparency for Employer and Employees - Self-Service cuts across all the functions in HCM. It ranges from employee declaring any data changes, such as personal information to employee viewing their payslips online. Application facilitates employees to receive the pay slips through e-mail with security

protection. All the changes/requests initiated by an employee through Self-Service can be subject to authorization. Authorization options and document routing paths can be configured in Workflow Management (part of Ramco HCM Productivity Tools).

7. Audit Trail - Audit trail will often point directly to any fraudulent activity and show up the areas that need to be investigated. Ramco application tracks all user actions (business transactions) which allows the administrator to set the logging activity for each function. Audit Trail component records the data regarding modification of each transaction (like user who changed, data and time of change etc.) and maintains it in a separate database.

8. Security - Ramco application allows you to define enterprise roles like HR Manager, Payroll Administrator, Supervisor etc. Users can be associated with the required roles. The user's role will determine the activities the user will have access to and govern the access restrictions (read and write) that apply. Users will only see activities, functions or business components that are permitted by the role(s) they are assigned.

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Ramco Systems is part of the USD 1 Billion diversified conglomerate, the Ramco Group of companies, and has 1900+ employees with 24 offices spread across the world. We are a fast-growing enterprise software player disrupting the market with our multi-tenant cloud and mobile-based enterprise software for ERP, Logistics, HR & Global Payroll, and M&E MRO for Aviation.

Complete with chatbots, voice, and facial recognition-based workforce management, organizations can deploy Ramco HR with Global Payroll on-cloud, on premise or leverage as a managed service. The multi-tenant architecture with embedded intelligence and device agnostics features now serves more than 500+ clients worldwide. With innovative concepts of Artificial Intelligence & Machine learning, Context-sensitive Pop-ups and Chatbots to carry out self-service, and Voice based HR transactions on Google Assistant & Alexa, Ramco has been setting the benchmark for Innovation in this segment. With statutory compliance across 45+ countries covering ANZ, Asia (including Japan & China), Middle-East & Africa, UK and Ireland, Ramco's Global Payroll is available in English, Japanese, Mandarin, Bahasa, Thai, Malay, Arabic among others.

To know how Ramco can help you create business value for your organization, feel free to reach out to **contact@ramco.com**