

Annualised Wage Arrangements, Above-Award Rates and Employer Record Keeping

LESSONS from the Coles and Woolworths decision

Modern awards set minimum rates of pay, penalty rates and other employment entitlements. Many employers choose to pay above the minimum award rate, sometimes through a higher flat hourly rate or a total salary package, for administrative simplicity or to recognise duties that extend beyond standard award work, such as supervisory responsibilities, practice management tasks or flexible working hours.

While the law itself has not changed, the recent Federal Court decision involving Coles and Woolworths¹ has clarified how these arrangements must operate in practice to remain compliant. The decision also provides important guidance on how time sheets and payroll records must be kept.

In light of the decision, employers can also expect increased compliance and enforcement activity in this area, including within small and medium professional practices.

Pay entitlements under a modern award

Under workplace law, employees covered by a modern award, such as the Health Professionals and Support Services Award 2020, must receive:

- the minimum hourly rate for their classification
- casual loading where applicable
- additional entitlements such as:
 - overtime penalty rates
 - weekend and public holiday penalty rates
 - shiftwork penalties
 - allowances
 - annual leave loading

This applies not only to physiotherapists, but also to reception staff, practice managers, therapy assistants and other administrative or support roles commonly employed in physiotherapy practices.

Many practices find it administratively simpler to pay a higher flat hourly rate or salary intended to cover these entitlements rather than calculating them separately each pay period. However, the Court has made clear that simplified pay arrangements do not remove the need for precise compliance and accurate record-keeping.

¹ *Fair Work Ombudsman v Woolworths Group Limited; Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd; Baker v Woolworths Group Limited; Pabalan v Coles Supermarkets Australia Pty Ltd [2025] FCA 1092 — Federal Court of Australia, delivered 5 September 2025*

Why pay above-award rates? Practical and strategic reasons

Physiotherapy practices may choose to pay above-award rates for a range of legitimate reasons, including:

- **Administrative simplicity**
A single rate can reduce payroll complexity compared with calculating multiple penalties and overtime rates.
- **Recognition of responsibility**
Senior physiotherapists, practice managers and admin leads often work variable hours or perform duties beyond the core award role. Above-award pay can recognise this additional responsibility.
- **Market competitiveness**
Practices may need to offer higher total remuneration to attract and retain experienced clinicians or skilled administrative staff.
- **Flexibility and certainty**
A higher fixed rate can provide income certainty for employees whose hours fluctuate week to week.

These reasons remain valid. However, they do not allow employers to bypass award obligations in any individual pay period.

The Coles and Woolworths decision: what the Court held

In September 2025, the Federal Court delivered judgment in consolidated proceedings brought by the Fair Work Ombudsman and employee class actions against Coles and Woolworths. The Court considered whether annualised salary arrangements with set-off clauses lawfully satisfied minimum award entitlements over extended periods.

Three key findings are particularly relevant for employers.

1. Set-off clauses operate only within a single pay period

The Court confirmed that contractual set-off clauses, which attempt to treat a salary or flat rate as satisfying award entitlements, only operate where the amount paid in each pay cycle, such as fortnightly or monthly, covers all entitlements that accrue in that same cycle.

Employers cannot rely on overpayments in one pay period to offset underpayments in earlier or later periods. Each pay cycle must stand on its own. Employees must be paid their entitlements in full for each applicable pay period.

This reflects the statutory requirement that employees be paid amounts payable in full at least monthly.

2. Record-keeping obligations apply even where salaries are high

The Court also held that employers must keep detailed records of employee hours and entitlements even where employees are paid annual or above-award salaries.

Coles and Woolworths were found to have breached record-keeping obligations because they did not maintain accurate and readily accessible records of overtime hours and penalty rate entitlements. The Court rejected the argument that roster data or clock-in and clock-out systems were sufficient where those records required interpretation.

Records must clearly show hours worked and the entitlements that arise from those hours. An employer should be able to understand compliance from the records themselves, without needing to reconstruct or infer information from multiple systems.

Because of inadequate records, the Court applied provisions of the Fair Work Act that shift the burden of proof to the employer in underpayment proceedings where required records are missing or incomplete.

Implications for physiotherapy practices

Ensuring compliance per pay period

Following the Court's ruling, practices must ensure that in every pay period:

- each employee's salary or flat rate fully satisfies their award entitlements for that period, and
- where the flat rate is insufficient for a particular pay cycle, a top-up payment is made so the employee is not worse off.

It is no longer sufficient to argue that an employee is better off across a longer annual period. Compliance is assessed pay period by pay period.

This is particularly relevant in practices where clinicians or admin staff work additional hours to cover classes, during busy periods, school holidays or staff absences.

Record-keeping is not optional

Even where staff are paid above-award rates, practices must retain:

- clear records of actual hours worked, including overtime
- details of penalty rates, loadings or allowances that would have applied under the award
- evidence showing how pay in each cycle satisfied those entitlements

Poor or incomplete records expose practices to significant legal risk, including reversed onus of proof if underpayment claims arise.

Best practice for above-award pay arrangements

To lawfully operate above-award or annualised salary arrangements, employers should ensure the following.

Contractual set-off clauses must be precise

Employment contracts should clearly state that the salary or flat rate is intended to satisfy specific award entitlements for each pay period. Relevant award clauses should be identified expressly to reduce ambiguity.

Pay structures should be reviewed regularly

When award minimum rates increase, practices must check that existing flat or above-award rates continue to cover entitlements in each pay cycle.

Robust time and payroll records must be maintained

Time records should separately identify ordinary hours, overtime and any penalty or loading entitlements. Records must be readily accessible and capable of inspection without requiring interpretation or reconstruction.

Top-up payments must be made when required

Where entitlements exceed the flat rate in a particular pay period, a top-up payment must be made to ensure compliance.

Conclusion

Paying an above-award rate can still be lawful and administratively attractive for physiotherapy practices. However, employers must ensure that:

- remuneration arrangements meet award entitlements in each pay cycle
- contractual clauses clearly reflect the intended set-off
- detailed and transparent payroll records are maintained

The Coles and Woolworths decision makes clear that these obligations apply to all employers, regardless of size. Physiotherapy practices should review their pay and record-keeping arrangements now to ensure they remain compliant and fit for purpose.

Practice checklist: are your pay arrangements compliant?

Physiotherapy practices paying above-award rates or annualised salaries should check the following.

Pay arrangements

- Each employee's pay meets or exceeds their award entitlements in every pay period, not just over the year
- Flat rates or salaries are reviewed when award rates increase
- Top-up payments are made in any pay period where entitlements exceed the flat rate

Employment contracts

- Contracts clearly state that the salary or flat rate is intended to satisfy specific award entitlements
- Relevant award clauses are identified to support any set-off arrangement

Time and attendance records

- Actual hours worked are recorded for all staff, including clinicians and admin staff
- Overtime, weekend work and public holiday hours can be clearly identified from records
- Records are understandable on their face, without needing system interpretation

Payroll and compliance

- Payroll records show how pay in each cycle satisfies award obligations
- Records are retained and readily accessible if audited or reviewed
- Practice managers and payroll staff understand how above-award arrangements operate in practice

Practices unsure about their arrangements should seek payroll or legal advice before issues arise.