The Sydney Morning Herald

EXCLUSIVE BUSINESS WORKPLACE CAREERS

Coles knew more than half its workers were underpaid

By Ben Schneiders, Royce Millar, Nick Toscano

19 August 2016 — 8:16pm

Supermarket giant Coles knew that more than half its workers were underpaid as part of a controversial workplace deal - saving it an estimated $70 million a year.

A report commissioned for Coles shows the company was aware of the extent of the underpayment as it was fighting a major case in the Fair Work Commission in which it was accused of short-changing workers.

Coles supermarket employee Penny Vickers has won the right for a full bench hearing in the Fair Work Commission.

Photo: Glenn Hunt

The Ernst & Young report from January, marked "confidential", includes detailed data on pay rates across two stores selected by Coles. It showed 56 per cent of workers were underpaid, often by large sums.

The data suggests that about 43,000 of Coles' 77,000 supermarket workers were being paid below the legal award minimum, the basic wages safety net.

The data emerged from a case brought by Duncan Hart, a Coles trolley operator who had appealed to the Fair Work Commission against the tribunal's approval of the Coles workplace deal.

In a landmark decision in May, the Fair Work full bench found the Coles deal with the Shop, Distributive & Allied Employees Association (SDA) had failed the important legal test that requires that workers are better off overall under any new agreement.

It found that some Coles workers faced "significant" underpayment - a fact first revealed by Fairfax Media in 2015.

The Coles deal provided lower (or no) penalty rates for night and weekend shifts. Many of the underpaid workers earn as little as $10,000 to $15,000 a year, including working on checkouts, night fill or as cleaners.

Coles is Australia's third largest employer and the extent of what Coles knew about the underpayment, and when, is an ongoing legal issue with a new case underway in the tribunal.

The company and union signed statutory declarations in mid-2015 to the effect that all workers were better off from the deal.

Brisbane night fill worker Penny Vickers, an SDA delegate, said workers did not know they would be underpaid when they voted to approve the deal.

"This is dreadful, what happened," she said. "It's not appropriate to pay less than the award and hide that from employees."

"Why wasn't it brought to our attention? Why were we were asked to vote for an agreement that pays less than the award," she asked. "I'd have never voted for an agreement that would pay me less than the award."

A Coles spokesman defended the deal.

"It is our firm belief that all monetary and non-monetary benefits should be taken into account as well as wages when assessing the overall value of the benefits Coles provides its team members," he said.

The Fair Work decision gave limited weight to the non-monetary benefits of the Coles deal as it found part-time and casual workers, who make up 80 per cent of the Coles workforce, were hardest hit.

Tim Lyons, Per Capita research fellow and a former ACTU assistant secretary, said Coles would have known all along the effect of its workplace deal on its bottom line and on wages.

"This is an incredibly sophisticated company, they make these claims with the aim of reducing wages costs. Any sense they would have been shocked by the decision - that is just bullshit."

Mr Lyons said the SDA needed to take some responsibility for agreeing to Coles' demands. But he said the bulk of the blame lay with Coles and the Fair Work tribunal which originally approved the agreement.

"They would know the effect these [terms] would have on their bottom-line wage costs," Mr Lyons said of Coles. "In the end, the main responsibility lies with the boss."

As part of the recent Fair Work case, lawyers for Coles commissioned Ernst & Young partner Bruno Cecchini to analyse and report on store rosters from Benalla and Northcote.

The raw data from the January report, analysed by Fairfax Media, shows that the average underpayment was $1497 a year. Taken across all its stores, that works out to between $64 million to $70 million a year.

Industrial researcher Josh Cullinan, who helped bring the original case against Coles, estimates the underpayment to be worth between $70 million to $100 million a year.

The overall results are likely to be conservative as the two stores featured in the case study have relatively limited trading hours.

Since the full bench decision in late May, Coles has refused to negotiate a new agreement with the union. Workers have instead been reverted to a 2011 agreement with Coles undertaking to keep the higher base pay rates from the 2015 deal.

Ms Vickers has now taken action at the Fair Work Commission to terminate that 2011 agreement.

A successful challenge would result in Coles workers being moved onto the award which pays lower hourly base rates of pay but much higher penalties and night payments.

The confidential Coles figures are embarrassing for the SDA which has consistently argued that the "vast majority" of its members were better off under the deal.

It also raises questions about a string of similar agreements across the retail and fast food sectors.

The full bench ruling has rocked the conservative union, which is renowned for its social agenda, including opposition to same-sex marriage. It recently said it would no longer have a position on the issue.

That allowed the ACTU this week to finally come out in support of marriage equality.

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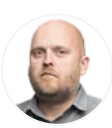

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