

8 October 2021

UPDATE ON THE WOOLWORTHS UNDERPAYMENT CLASS ACTION
Baker & Anor v Woolworths Group Limited ABN 88 000 014 675 & Anor | NSD 2004 of 2019

1. Fair Works Ombudsman Proceedings

- 1.1 In June 2021 the Fair Work Ombudsman (**FWO**) began proceedings against Woolworths Group Limited and Woolworths (South Australia) Pty Limited (**Woolworths**), being *Fair Work Ombudsman v Woolworths Group Limited (ACN 000 014 675) & Anor (FWO Proceeding)*.
- 1.2 The FWO Proceeding and the Woolworths underpayment class action (**Class Action**) both allege that salaried supermarket managers employed by Woolworths were underpaid under the *General Retail Industry Award 2010*. While there are significant similarities between the two proceedings, there are four primary differences, which are set out in the table below.

	Class Action	FWO Proceeding
Covered Period	29 November 2013 to 29 November 2019	June 2015 to 30 September 2019
Payment of Penalties	The Class Action seeks that pecuniary penalties for contraventions of the <i>Fair Work Act 2009</i> be paid by Woolworths to class members	The FWO seeks that pecuniary penalties be paid to the Commonwealth
Costs of Litigation	The Applicants would seek to deduct Adero Law's legal fees from a portion of any settlement money	The FWO would not pass on its legal fees directly to employees
Additional Hours	The Class Action seeks compensation for hours worked by class members that are recorded in Kronos and hours not recorded in Kronos (or other time and attendance system used by Woolworths)	The FWO presently seeks compensation only for hours worked by that were recorded in Kronos (or other time and attendance system used by Woolworths)

- 1.3 The Applicants applied to the Court to intervene in the FWO Proceeding on behalf of themselves and class members in the Class Action on 21 July 2021. The Applicants intend to submit that any pecuniary penalty that the Court orders in the FWO Proceeding should be paid to the Applicants and class members.

2. Settlement of the Class Action

- 2.1 The Class Action has reached a provisional settlement. This means that the Applicants and Woolworths have agreed to settle the Class Action, but the settlement has not yet been approved by the Court.
- 2.2 The settlement would require the Applicants to discontinue the Class Action. This means the Class Action would end.
- 2.3 The settlement would require Woolworths to pay any further compensation to class members back to November 2013 in accordance with the legal principles decided in the proceeding brought by the Fair Work Ombudsman against Woolworths on 17 June 2020. This means class members who worked between 29 November 2013 and 16 June 2015 and between 1 October 2019 and 7 October 2021 may receive additional compensation (if they were underpaid during those periods) following the outcome of the Fair Work Ombudsman's proceeding. Class members who worked between 17 June 2015 and 30 September 2019 are already covered by the FWO Proceeding for that period.

3. Next Steps

- 3.1 The Applicants and Woolworths will apply to the Court for settlement approval. Prior to the Court approving the settlement, class members will be given a notice from the Court setting out the details of the settlement agreement and the opportunity to object to the settlement.
- 3.2 We appreciated that class members may have questions for us about this process and the settlement. Class members may contact us on **1300 575 102** or **woolworths@aderolaw.com.au**.
- 3.3 Please be aware that the details of the settlement agreement are still subject to confidentiality, and therefore Adero Law is not at liberty to discuss the settlement in any further detail at this time. Class members will be fully informed about the settlement agreement and settlement process in the upcoming notice from the Court.

Signed



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