

25 July 2023

**UPDATE ON THE COLES UNDERPAYMENT CLASS ACTION**

***Pabalan v Coles Supermarkets Australia Pty Ltd | NSD 542 of 2020***

- 1.1 The initial trial for the Coles Class Action commenced on 5 June 2023 in the Federal Court and finished on 21 July 2023. The initial trial is being run alongside the regulatory proceedings brought by the Fair Work Ombudsman (**FWO**) against Coles and Woolworths and the Woolworths Class Action also run by Adero. The proceedings are being run together because they involve many of the same legal issues, which avoids multiple hearings on similar questions of law.
- 1.2 Justice Perram heard evidence on the policies implemented in Coles and Woolworths stores and the working practices of Coles department managers, including in relation to its systems for rostering, clocking, whether there was a requirement for employees to work overtime to ensure completion of all tasks and time off in lieu. Maria Pabalan, the lead applicant, gave evidence as to her working hours during her employment. The parties also made submissions to the Court on how clauses in the General Retail Industry Award (the **Award**) should be interpreted.
- 1.3 Justice Perram will be deciding common questions agreed by the parties. These are questions which will apply to most or every group member in the class action. Some common questions being determined include whether Coles met its record keeping obligations in relation to employee records as required by the *Fair Work Regulations 2009* (Cth), how Coles and salaried managers could form agreements to vary their entitlements under the Award and how hours worked at certain times should be allocated against certain entitlements.
- 1.4 Now that the initial trial is complete, Justice Perram will give a written judgement which will decide questions of interpretation of the Award after carefully considering all evidence and submissions by the parties. Given the complex nature of the legal arguments, we are unable to say with any certainty when Justice Perram will give a written judgement. The parties will then seek to calculate group member entitlements based on the judgement before moving to any further hearing or mediation on compensation likely to occur in 2024 on any remaining individual issues of group members to fully resolve the dispute.
- 1.5 Adero Law is focused on achieving the best outcome for group members at the initial trial and expect to be able to provide a further update towards the end of the year.
- 1.6 We understand that the pace of justice can at times be frustratingly slow. Please know that Adero Law remains committed to getting each group member fair compensation for every hour they worked. We are grateful for your continued support and patience.
- 1.7 For the latest information and our contact details, please visit the Coles class action website at <https://www.aderolaw.com.au/class-actions/retail/coles/>.

Sincerely

*The Coles Class Action Team*

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