

UPDATE ON THE COLES CLASS ACTION

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

1. Background

- 1.1. In May 2020, Adero Law (**Adero**) on behalf of Ms Palaban and salaried managers, filed a class action against the Coles in the Federal Court of Australia alleging the annualised salaries paid to staff were not sufficient to satisfy their entitlement pursuant to the *General Retail Industry Award 2010*. The class action is on behalf of approximately 10,500 current and former salaried Coles managers over the period of 19 May 2014 to 18 May 2020.
- 1.2. On 5 September 2025, Justice Perram delivered a judgment impacting approximately 40,000-45,000 individuals across Australia in the Coles and Woolworths businesses, including Big W. The judgment is in respect of a 7-week trial which occurred on 5 June 2023 to 21 July 2023.

2. Key Findings

- 2.1. Adero has reviewed the judgment and notes that the Court has found against Coles on key issues, including:
 - a) that employment entitlements must be paid in full within each pay period (this involves a finding from the Court that Coles had failed to discharge its statutory duty in respect of payments made across the course of the class action period of 2014- 2020);
 - b) that Coles failed to keep accurate records or in some cases any records of the actual hours worked by its employees during the period of the class action and as such any inaccurate or incomplete record of the employer cannot be relied upon to determine any underpayments owing; and
 - c) Section 557C of the *Fair Work Act 2009* (Cth) (**FW Act**) now requires Coles to disprove each hour of work claimed by the employee during the class action period from September 2017 onwards.
- 2.2. It was found by Justice Perram that the clear “*evidentiary vacuum*” that Coles relied upon to conduct its HR and payroll system was a “*calamity which belongs to Coles and not its employees*”. This finding is significant given that it is the central allegation of the class action that Coles did not have any adequate system for recording hours worked and for paying its employees their entitlements as they arise by which to discharge their legal obligations under the FW Act.
- 2.3. We consider these findings, based on extensive review of evidence put forward by both Coles and the Applicant, likely now exposes Coles to further back payments beyond those already made in its internal remediation process. The judgment also stands as a victory in seeking to hold Coles accountable to properly account for its legal obligations to its employees.

3. Next Steps From You

- 3.1. Adero encourages people to continue to register so that we can have your contact details on file and continue to provide updates about the status of the class action. For individuals who have

previously registered but have since updated their contact information, please send an email to coles@aderolaw.com.au so that we can update your details.

- 3.2. Adero will be in contact with individuals in order to seek further information as required and evidence as to your hours worked. Please note this will take place gradually over the coming year.
- 3.3. Please be advised that the client portal used before is no longer active. If you have any questions, please do not hesitate to email coles@aderolaw.com.au and the Coles Class Action Team will be in touch with you.

4. Next Steps From Us

- 4.1. The parties are now using the principles contained in the judgment to calculate group members' entitlements. This is being undertaken prior to any further hearing or mediation on compensation for any remaining individual issues of group members, in order to fully resolve the matter.
- 4.2. The question on whether Coles should pay an amount for "penalties" due to breaching clauses of the Award and what amount they should pay also still needs to be resolved by the Court. If Coles seeks to appeal certain issues contained in the judgment that may delay the timetabling of events. There will be a case management hearing in November 2025 where the Court will timetable the next steps in the proceedings.
- 4.3. Adero Law is focused in achieving the best outcome for group members. 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 a fair compensation for every hour they worked. We are grateful for your continued support and patience.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read 'Adero', written in black ink.

THE COLES CLASS ACTION TEAM