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## Hays, Stellar Recruitment hit with \$50 million class actions over casuals

By [David Marin-Guzman](#)Updated 08 Jan 2019 — 6:32 PM,  
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Class actions worth up to \$50 million have hit top labour hire companies Hays and Stellar Recruitment over their allegedly unlawful use of casuals in the mining industry.

Canberra based law firm Adero Law launched the actions in the Federal Court at the end of last year, claiming the companies had underpaid thousands of workers leave and other entitlements for years.

The class actions kick off what is expected to be a barrage of legal cases over the next two months targeting the mining industry's allegedly systemic abuse of casual employment.





Miners in the black coal industry were underpaid millions of dollars, a class action law firm claims. **James Davies**

Hays, whose chief client was BHP Mitsubishi Alliance, is facing claims it was underpaying up to 1500 workers since at least 2014 because it engaged them as casuals rather than as permanent employees.

Under the black coal industry award, the use of casual employees is prohibited except through an enterprise agreement.

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But despite Hays' expertise, the company bizarrely did not negotiate an EA that would have allowed it to legally use casuals.

While the class action has not specified a final compensation figure, lawyers estimate that Hays could be forced to pay between \$30 million and \$35 million.

Adero principal Rory Markham said Hays' lack of an EA was "bizarre given the liability continued to accrue".

"It seems odd that despite the amounts being claimed, they continue to engage people as casuals even when we put them on notice."

## 'Strongly believe action has no merit'

A Hays spokesperson said the company "intends to vigorously defend this action".

"We place the utmost importance on regulatory compliance, and are committed to best practice in staffing and recruitment," he said.



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Hays is expected to use an "offset" argument in its defence and its spokesman said casuals were paid a higher rate including 25 per cent loading "in lieu of permanent employment benefits".

"To allow what is effectively double dipping would have severe negative implications for Australian businesses."

However, Mr Markham said to use the offset argument Hays needed to specify in its contracts that a 25 per cent loading was in lieu of permanent entitlements, which it had not done.

"They have the weakest contracts in the resources industry," he said, adding it was also investigating legal action over Hays' supply of casuals in the iron ore sector.

After Adero first [flagged it was investigating Hays](#), the recruitment firm belatedly sought an EA but workers voted the agreement down late last year.

## Stellar facing \$15m claim

Stellar Recruitment is also facing an estimated \$10 million to \$15 million in alleged underpayments for similar reasons in a class action representing 500 workers.

The company supplied casuals to major black coal industry clients BMA and Glencore but had no EA between 2012 and the first half of 2015. It did not respond to requests for comment.

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The Adero labour hire class actions, which include ones filed against BHP and Chandler McLeod last year, have already shaken up the mining industry.

BHP announced late last year it had [decided to stop using contractors](#) and would set up its own labour hire subsidiaries after the bulk of its labour suppliers were targeted by Adero.



However, the class actions could hinge on a Federal Court challenge pursued by WorkPac that seeks to overthrow the so-called Skene precedent, which allows regular casuals to claim both loading and permanent entitlements.

Industrial Relations Minister Kelly O'Dwyer has intervened in the case, expected to be heard next month, and also [issued regulation at the end of last year](#) that sought to bar "double dipping".

But Mr Markham said the regulation was unlikely to be an obstacle as even its explanatory memorandum said it was "[merely declaratory of the existing law](#)".

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