

HARSHER PENALTIES FOR ROGUE EMPLOYERS

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* and recent Federal Court decisions highlight the importance of employers meeting their obligations to employees.

What are your obligations as an employer?

Record-keeping

Employers must make and keep proper employee records, including providing pay slips to employees. Pay slips must contain details of the payments, deductions and superannuation contributions for each pay period and must be given to an employee within one working day of pay day.

Employers should avoid temptations to make informal arrangements with employees. Defending a claim of improper record-keeping is difficult and can be expensive. Many employers find themselves in hot water for cash-in-hand arrangements.

Recently, two Gold Coast restaurant owners were penalised almost \$300,000 for underpaying workers and falsifying employment records when audited by the Fair Work Ombudsman.

In this case, employees were paid in cash at a rate below the relevant Restaurant Award. The employer failed to pay superannuation and loadings for weekends and public holidays, neglected to provide pay slips and produced false employee audit records.

In its decision, the Court stated that "The failure to keep records is a very serious matter... A business cannot be conducted properly without proper records, and neither can the Fair Work Ombudsman do their job without proper records being kept."

Penalties

Parliament, the Fair Work Ombudsman and the Courts take these breaches seriously. The penalties for 'serious contraventions' of the *Fair Work Act 2009* (where the contravener knowingly contravenes the law and continuously does so) have risen significantly. Legislation passed in September last year increases the maximum penalties by 1000% and doubles the maximum penalties for record-keeping and pay slip breaches.

Further, it is for an employer to disprove wage claims made in court rather than employee to prove them. Franchisors and holding companies may be held responsible if they knew or ought to have known that their franchisees or subsidiaries were in breach of workplace laws.

In short, there has never been a more critical time for employers to self-audit their compliance with the law.

Need to talk to someone about your workplace practices? Contact [Heather Richardson](#) or [Isabella Royce](#) at Kalus Kenny Intalex.