

Accessorial Liability Under the Fair Work Act: Everything You Need to Know

(But Wish You Didn't!)
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Leader

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Defining Accessorial Liability

It all starts with section 550
of the Fair Work Act
2009...

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Section 550

(1) A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.

(2) A person is involved in a contravention of a civil remedy provision if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced the contravention, whether by threats or promises or otherwise; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) has conspired with others to effect the contravention.

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Defining Accessorial Liability

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Section 550 means you can be held personally liable for **indirectly not doing something!**

Defining Accessorial Liability

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Why This Matters to You

You could quite easily become an
accessory by:

- Assisting with any aspect of HR and/or payroll processing
- Providing advice about pay rates, the National Employment Standards (NES), Modern Awards or any other Fair Work-related entitlements
- Assisting with employment arrangements through a supply chain or franchise network

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- **Indirectly not doing any of these!**

Why This Matters to You

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- **This list is not exhaustive!**

Why This Matters to You

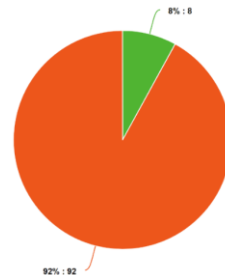
What are the chances of the Fair Work Ombudsman (FWO) trying to hold you personally responsible for your clients' breaches of the Fair Work laws?

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Why This Matters to You

What are the chances of the Fair Work Ombudsman (FWO) trying to hold you personally responsible for your clients' breaches of the Fair Work laws?

92
%



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And who is the FWO targeting?

Why This
Matters to You

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And who is the FWO targeting?

Why This
Matters to You

- Payroll officers
- HR advisors
- Accountants & Bookkeepers
- And more...

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Why This Matters to You

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And who is the FWO targeting?

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Why This Matters to You

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And who is the FWO targeting?

- Employees too

Maximum penalties:

Why This
Matters to You

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Maximum penalties:

Why This
Matters to You

For you: \$12,600
For companies: \$63,000

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Cases:

Why This
Matters to You

*WO v Oz Staff Career
Services Pty Ltd & Ors*
[2016] FCCA 105

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Cases:

Why This
Matters to You

*FWO v Oz Staff Career
Services Pty Ltd & Ors*
[2016] FCCA 105

HR Manager penalty:
\$9,920

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Cases:

Why This
Matters to You

*FWO v Step Ahead Security
Services Pty Ltd & Anor
[2016] FCCA 1482*

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Cases:

Why This
Matters to You

*FWO v Step Ahead Security
Services Pty Ltd & Anor
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Director penalty: \$51,400

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What the FWO said:

Recent FWO Activity

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“We have been concerned about the role of key advisers, such as accountants and HR professionals, in some serious and deliberate contraventions. Small business relies heavily on trusted advisers, and if they give incorrect or bad advice, or deliberately assist with the contravention, should they not be held accountable? In situations where we believe accountants or other professionals knowingly facilitate contraventions of workplace laws, we are prepared to hold them to account.”

What the FWO did:

Recent FWO Activity

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FWO secures first accessorial liability penalties against an accounting firm

18 November 2017

The Fair Work Ombudsman has for the first time used accessorial liability laws to obtain penalties against a professional services firm for knowingly helping one of its clients exploit a vulnerable worker.

Victorian accounting firm Ezy Accounting 123 Pty Ltd has been penalised \$53,880 after the Federal Circuit Court found earlier in the year that it facilitated underpayments by its client, fast food operator Blue Impression Pty Ltd.

Blue Impression has been penalised an additional \$115,706 after admitting it underpaid two Taiwanese workers at its Hanaichi QV Japanese fast food outlet in the Melbourne CBD a total of \$9549 between September 2014 and April 2015.

Ezy Accounting 123 was involved in facilitating \$750 of the underpayments relating to one of the workers.

The penalties, imposed in the Federal Circuit Court, are the result of legal action by the Fair Work Ombudsman.

More FWO Wisdom:

Recent FWO Activity

“Above all, **you must explain** the rules to your clients, make it clear when they are in danger of breaking them and not become involved in breaches of the law yourself.”

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More FWO Wisdom:

Recent FWO Activity



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More FWO Wisdom:

Recent FWO Activity



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And My Personal Favourite!

Recent FWO Activity

“Be warned...we have a growing arsenal of options to help us make workplaces fair and you don't want to get caught in the crossfire when we go after [your clients] who do the wrong thing.”

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Steps You Can
(and Should)
Take

1. Tell your clients
your services are
subject to expert
advice being **received
and followed.**

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Steps You Can
(and Should)
Take

2. Only ever obtain advice from **qualified experts** in Australian employment law – be especially wary of rogue service providers.

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Steps You Can
(and Should)
Take

3. Make sure everything is recorded in **writing**.

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Steps You Can (and Should) Take



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Steps You Can (and Should) Take

4. ‘Join the dots’:
because wilful
blindness is **not** a
defence.

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Steps You Can (and Should) Take

5. Walk away: don't let
yourself become an
accessory to your
clients' breaches.

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Q&A

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Thank you

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