

The *Fair Work Act* for Accountants: What you need to know

As an advisor, your clients may request that you provide services relating to their workplace arrangements including providing advice about pay rates, national employment standards, modern awards or other employment laws, or performing payroll or audit functions.

Employer obligations

Australian employment laws are complex. Employers have a number of obligations with respect to their employees arising out of the *Fair Work Act 2009* (Cth) (**the Fair Work Act**) and other state and federal legislation, as well as under any applicable industrial agreement such as an enterprise bargaining agreement or a modern award, which could apply to your clients' workplaces, including:

- Minimum wages;
- Overtime payments for work in excess of normal hours;
- Hours of work and rostering;
- Penalty rates for shift work and weekend work;
- Allowances for specific attributes of a job such as dirty or dangerous work;
- Leave accruals;
- Maintaining employee records and issuing payslips;
- When amounts can be deducted from an employee's pay;
- Sham contracting (engaging workers as "independent contractors" when they are in fact employees);
- Timing for payments - some awards specify that wages must be paid weekly or fortnightly. Employers may also be obliged to pay employees their final pay within a certain amount of time after an employee's employment is terminated.

The Accountant and accessorial liability

As an adviser, you need to be aware of your client's obligations. You should reasonably satisfy yourself of what obligations may apply, and whether your client meets those obligations. You could be liable as an accessory if your client breaks the law and you are knowingly involved in that contravention. Knowledge of contraventions may be inferred from a combination of suspicious circumstances or a failure to make appropriate inquiries.

In the last few years, multiple accountants have been found accessorially liable for breaches of the *Fair Work Act* by their clients.

In August 2018,¹ the Full Court of the Federal Court of Australia ordered an accounting firm to pay a penalty of \$51,330 for its involvement in underpayments by its client. The accounting firm was responsible for the payroll services of a Japanese food chain. The accountant was aware that there

¹ Fair Work Ombudsman v Blue Impression Pty Ltd [2017] FCCA 810; Fair Work Ombudsman v Blue Impressions Pty Ltd (No 2) [2017] FCCA 2797; EZY Accounting 123 Pty Ltd v Fair Work Ombudsman [2018] FCAFC 134.

was an applicable modern award, knew that the award provided for a base rate of pay for ordinary hours and additional penalty rates and allowances and also knew that the rates in the payroll system

were not sufficient to allow the employer to comply with the obligations imposed on it. However, the accountant did not ask the client whether to increase the rates or advise the client to do so and continued to enter the information in accordance with instructions given. The Court found that the accountant was liable for employee underpayments and was an accessory.

In another matter,² an individual accountant was fined \$4,608 for his involvement in preparing false employment records (including PAYG payment summaries and fortnightly pay records) which were submitted to the Fair Work Ombudsman (**FWO**) by a client in connection with an investigation by the FWO into underpayments. Pay slips had never been issued to employees, contemporaneous time and wage records were never made or kept and tax was never withheld from wages and remitted to the ATO. The accountant knew the records were false and they would be provided to the FWO.

Stay alert

Maintaining two sets of books, or requests to produce false records are obvious red flags. The following situations may constitute other examples of an employer who is not complying with its workplace obligations, and further investigation or enquiries may be warranted:

- Adult employees with an hourly rate of less than the current minimum hourly wage of \$18.93.
- Employees receiving the same flat rate of pay for all hours worked even though the business employs staff on weekends, nights or on a 24/7 basis.
- Full-time employees with weekly wages of less than the current minimum weekly wage of \$719.20 per 38 hours week, or full-time employees working over 38 hours per week who receive a weekly wage of \$719.20 or less.
- Casual employees receiving the same hourly rate as part-time or full-time employees (should be paid a 25% casual loading).
- Award covered employees whose pay rates remain static each year, including employees on junior rates not receiving annual increases.
- Clients requesting deductions from an employee's pay to cover a till shortage due to an overpayment made to an employee, or an employee left employment without giving notice.

You should make enquiries with your client, or refer them to an external advisor, if you think they may be unaware of their obligations or not acting in compliance with workplace laws.

² Fair Work Ombudsman v Kjo Pty Ltd & Ors [2017] FCCA 3160.

The bottom line

If you are asked by a client to advise on obligations under the *Fair Work Act*, or under a modern award, only accept the engagement if you have appropriate knowledge of those areas to provide competent advice. Take detailed notes confirming any advice given, or provide your advice in writing.

You should seek specialist advice or refer your client to an external advisor where you are unsure if your client's arrangements are compliant with their workplace obligations.

Don't turn a blind eye to any conduct that you know or suspect does not comply with the law. Work with your client to address any issues.

All IPA members and members of other professional accounting bodies have a professional and ethical obligation under NOCLAR to report to the relevant authority, any actual or potential material breaches of legislation or regulations.

More information

The Fair Work Ombudsman can be provide information on employee entitlements and modern awards. Please visit: <https://www.fairwork.gov.au/> or phone 13 13 94.