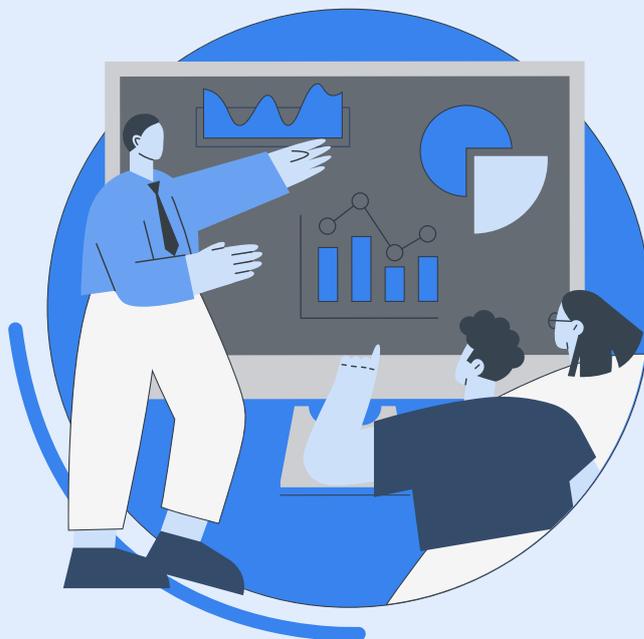


Professional Services Fair Work Case Study

Most employers are not HR professionals, so this can lead to them creating HR risk without them even knowing it.



Case overview

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 has been penalised \$53,880 after the Federal Circuit Court found earlier in the year that it facilitated underpayments by its client, a fast food operator. The fast food operator has been penalised an additional \$115,706 after admitting it underpaid two Taiwanese workers at its outlet in the Melbourne CBD a total of \$9549 between September 2014 and April 2015. The accounting firm 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.

The accounting firm provided payroll services for fast food operator and processed wage payments for one of the two underpaid Taiwanese workers at the outlet despite knowing the rates the worker was being paid were below lawful minimums. Both the Taiwanese workers, who were in Australia on 4/17 working holiday visas, were paid flat rates as low as \$16.50 an hour.

This was below the minimum hourly rate and not enough to cover public holiday penalty rates and weekend, night and casual loadings they were entitled to under the Fast Food Industry Award. The workers, aged in their 20s, were also not provided with a clothing allowance and their entitlements to breaks under the Award. Record-keeping and pay slip laws were also contravened. The underpayments occurred despite the Fair Work Ombudsman having previously put both the fast food operator and the accounting firm on notice of their obligations under workplace laws.

The fast food operator was previously audited in 2014 as part of the Fair Work Ombudsman's proactive National Hospitality Campaign and was put on notice of its workplace obligations after it was found to have underpaid 12 employees a total of \$8800.

The accounting firm was also apprised of minimum Award rates at the time of the audit, as it assisted the company to calculate and rectify the wage underpayments.

In his judgment, Judge John O'Sullivan found that the two Taiwanese employees at the fast food outlet were vulnerable workers and had been "the victim of exploitation".

In relation to the worker the accounting firm was involved in underpaying, the firm

submitted in Court that the worker “was not the firm’s employee” and that “the firm did not exploit (the employee) in his work”. However, Judge O’Sullivan said that it was a “circumstance of aggravation” that the accounting firm had been “knowingly involved in conduct that constitutes illegality”.

“The firm was not subject to direction by the fast food outlet as an employee,” Judge O’Sullivan said. “The firm was involved in a relationship with the fast food outlet where it provided payroll services. As such it must put compliance with the law ahead of business interests. The accounting firm had a responsibility to ensure there was compliance with, inter alia, the FW Act.”

Case facts

- The accounting firm has been penalised \$53,880 for facilitating underpayments by its client
- The fast food operator has been penalised an additional \$115,706
- Workers were underpaid a total of \$9549 with the accounting firm facilitating \$750 of the underpayments
- The employees were on 417 working holiday visas, and paid flat rates as low as \$16.50 an hour

- Penalty amounts in excess of \$165,000
- Previously the fast food outlet had been found to have underpaid 12 employees a total of \$8800.

What they should have done

The accounting firm and the fast food outlet should have better understood employees’ rights under the relevant award and minimum entitlements included within the award and NES.

How Happy HR would have helped this business avoid the fair work claim

The Happy HR team work alongside a number for consultant to educate them on employee entitlements. With our Premium Services, employers have a qualified HR consultant capable of completing Award Interpretations for each employee.

Happy HR ROI (based off a 50-person company)

Fair Work penalty = \$165,000 = An equivalent of 55 years subscription with Happy HR! Plus countless hours saved on administration and in Fair Work!

