



Franchisor Responsibility

There have been recent amendments to workplace laws that affect certain franchisors. Under these changes, there are additional provisions that mean franchisors can be held responsible for their franchisees' conduct and subject to enforcement action, court proceedings and penalties if their franchisees have contravened the Fair Work Act 2009 (FW Act).

Who is affected?

These provisions apply to what is called a 'responsible franchisor entity'.

To be a responsible franchisor entity, all of the following 3 things are required:

1. There must be a franchise

- This requires an arrangement where the owner of a brand or trademark (franchisor) allows a person to earn money by using the brand or trademark, or the reputation of the brand, in running a business (franchisee)

2. The franchisee's business must be substantially or materially associated with intellectual property (for example, the trademark) relating to the franchise

- This means that the use of the franchise branding, such as a trademark, logo or marketing, must be a major feature of the business operated by the franchisee

Example

ABC Foods Pty Ltd is a franchisor for a food outlet called 'Good Foods'. XYZ Pty Ltd enters into an arrangement to become a 'Good Foods' franchisee.

XYZ Pty Ltd opens a new food outlet, which is branded as a 'Good Foods' and uses the 'Good Foods' logo on all of its advertising, menus, staff uniforms, food containers and social media.

3. The franchisor has a significant degree of influence or control over the franchisee's affairs

- This examines the degree of influence or control a franchisor has over a franchisee's financial, operational and/or corporate affairs. There will be some degree of influence or control in all franchise arrangements. In order for the extended liability provisions to cover a franchisor, a significant level

of involvement in the franchisee's business affairs is needed

- Determining whether influence or control is significant will depend on the franchise model and the parties. It looks at:
 - the rights of the franchisor to direct, manage, regulate, determine or command the franchisee entity about financial, operational and/or corporate matters. For example things like trading hours, sales targets or quotas, staffing levels, expenditure on business expenses and costs
 - how the relationship works in practice, such as how much the franchisor influences or contributes to management or operational decisions of the franchisee business, or affects the franchisee's ability to generate revenue or profits.

Example

ABC Foods Pty Ltd specifies the systems XYZ is to use when running the 'Good Foods' outlet.

It also sets the store opening hours, prices, service standards, promotions and advertising campaigns, and which suppliers XYZ can use to buy ingredients and business supplies and equipment.

Given ABC has significant influence and control over XYZ's business it would be a 'responsible franchisor entity'.

What kinds of contraventions are covered?

A responsible franchisor entity can be held legally responsible if a franchisee contravenes certain provisions of the FW Act. These provisions include:

- entitlements under
 - the National Employment Standards
 - awards and agreements
- national minimum wage orders, equal remuneration orders and guarantees of annual earnings
- rules for methods and frequency of payment
- pay slips and record-keeping
- sham contracting.

When would a franchisor be liable?

Responsible franchisors can be held legally responsible for franchisees' conduct if they (including an officer of the franchisor):

- knew, or could reasonably be expected to have known, that a relevant contravention would happen, or
- at the time the contravention happened, knew, or could reasonably be expected to have known, that a contravention of the same or similar kind was likely to happen, and
- haven't taken reasonable steps to prevent the contravention or a contravention of the same or similar character.

What actions can be taken?

Responsible franchisors can be subject to enforcement action for breaches of their extended liability provisions in the FW Act and can be subject to court proceedings.

If a franchisor is found legally responsible for a franchisee's conduct, a court can make a range of orders, including that the responsible franchisor pay compensation to the franchisee's employees. It can also order that the franchisor pay penalties (per contravention) of up to \$12,600 for individuals and \$63,000 for corporations.

The FW Act enables responsible franchisors to apply to a court to recover from the franchisee (if it hasn't already), the amounts it was ordered to pay to the franchisee's employees because of the franchisee's contravention. Interest may also apply.

If the responsible franchisor was required to pay penalties, they can't recover these under the FW Act.

Any person or franchisor who was knowingly involved in a contravention remains subject to the existing accessorial liability provisions in the FW Act. For more information about [accessorial liability and what it means for individuals and businesses](#) visit www.fairwork.gov.au/about-us/news-media-releases/newsletter/august-2016/what-is-accessorial-liability.

How can franchisors prevent workplace contraventions?

If the responsible franchisor has taken reasonable steps to prevent a contravention of the same or similar character as the contravention that happened, they won't be held legally responsible.

Working out whether the steps a responsible franchisor did take were reasonable depends on a number of factors including:

- the size and resources of the responsible franchisor
- the ability for the responsible franchisor to influence or control the actions of the franchisee in relation to the obligation it didn't meet
- the procedures for handling complaints about possible underpayments or breaches of workplace laws in the franchise
- what steps the responsible franchisor took to encourage, support or train franchisees regarding complying with workplace laws
- whether the responsible franchisor had any arrangements in place to monitor or assess the franchisee's compliance with wage, payment and record-keeping obligations in relation to employees.

Franchisors may already have processes in place to promote and monitor workplace compliance in their networks. For franchisors who need to take additional steps, consider:

- including workplace compliance as a term in your franchise agreement or ensuring other business arrangements require franchisees to comply with workplace laws
- providing franchisees support to comply with workplace laws and encouraging franchisees to access our free resources or other expert advice
- encouraging franchisees to cooperate with any audits by the franchisor or the Fair Work Ombudsman (FWO)
- establishing a channel (for example, an email or phone number) for employees to report workplace issues
- monitoring of workplace compliance in the network.

For more information about steps you can take to promote and monitor workplace compliance in a franchise network, please visit our [franchise section](#) at www.fairwork.gov.au/franchises.

What should franchisors do now?

Franchisors should review the arrangements they have in place that support compliance with workplace laws by their franchisees who employ people to work in the business. The FWO provides a range of free resources and tools that can help your franchisees comply with their obligations, including:

- our [website](#) at www.fairwork.gov.au, which has information and advice about workplace laws
- [My account](#), which provides tailored information and lets you make enquiries online for priority support. Register now at www.fairwork.gov.au/register

- our [Pay and Conditions Tool \(PACT\)](#), which helps you work out what you need to pay your employees. Use the calculator at www.fairwork.gov.au/PACT
- our [Online Learning Centre](#), which has free, interactive short courses to teach you new skills and strategies. Access them now at www.fairwork.gov.au/learning
- our [Record My Hours](#), app which helps small business owners who do not have the resources to install expensive automated time-recording systems help their employees record and store the hours they work, plus other information about their employment. For more information see www.fairwork.gov.au/app
- the [Fair Work Handbook](#), which outlines your responsibilities under the FW Act, the National Employment Standards, awards and agreements. Download it from www.fairwork.gov.au/smallbusiness.

We are developing a range of materials to help franchisors manage their obligations under workplace laws, including practical tips on how to promote compliance with workplace laws in your franchise network.

Stay up to date

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Fair Work Infoline: **13 13 94**

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