

## Better protection for workers as new Fair Work law passes Parliament

6 September 2017

The Fair Work Ombudsman Natalie James has welcomed the passing of new laws that will significantly enhance its capacity to take action in cases of exploitation of vulnerable workers.

The Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 passed the Parliament on 5 September.

It includes a range of measures including an increase in the maximum penalties for employers who deliberately flout the minimum wage and other entitlements under the Fair Work Act 2009.

The new laws will apply from the day after the Bill receives royal assent, except for the new franchisor and holding company liability which will start six weeks later.

The new law will hold certain franchisors and holding companies responsible for underpayments by their franchisees where they knew, or reasonably should have known, about the contraventions and failed to take reasonable steps to prevent them.

The laws will apply to franchisors that have a significant degree of influence or control over the franchisee's affairs.

The laws apply new, higher financial penalties to 'serious contraventions' which are 10 times the current maximum penalties. A court could impose these higher penalties where an employer knew they were breaching their obligations and this conduct is part of a systematic pattern of behaviour. In such cases maximum penalties of \$630,000 and \$126,000 per contravention could apply to corporations and individuals respectively.

The new laws will double the maximum penalties for record-keeping and pay slip breaches, to \$12,600 per contravention for individuals and \$63,000 for companies, and triple existing penalties in cases where employers give false or misleading pay slips to workers, or provide the Fair Work Ombudsman with false information or documents. Last financial year two-thirds of the FWO's court cases involved alleged record-keeping or payslip contraventions with nearly one third involving allegations of false or misleading records being provided to the FWO.

Amendments moved by the Senate will also provide that where an employer has not met their record-keeping or pay slip obligations, the employer will have to disprove a wage claim put before a Court unless the employer has a reasonable excuse for not keeping records or issuing pay slips.

Ms James also welcomed the strengthening of laws governing "cashback" arrangements with the legislation specifically prohibiting unreasonable requirements for an employee to pay money to their employer or another person. These protections will now also extend to prospective employees unreasonably required to pay their own money to get a job.

"New evidence gathering powers contained in the legislation will allow the Fair Work Ombudsman to require a person to provide information or documents to the FWO or to attend before senior FWO officials to answer questions on oath or affirmation that relate to underpayment of workers," Ms James said.

There are strong protections for individuals in relation to these evidence gathering powers including: supervision by the Administrative Appeals Tribunal and the Commonwealth Ombudsman, rules preventing the evidence a person gives from being used against them personally, the right to have a lawyer present if they attend to answer questions and the right to claim reimbursement of reasonable expenses.

Ms James reiterated previous statements that this power will be deployed as a last resort – while most employers work with the FWO to address concerns that may have arisen about an employee's entitlements and provide FWO with the information it needs to resolve such matters, those engaging in deliberate breaches of the law often do not cooperate.

"We will always welcome new tools, resources or powers that will help the agency address serious cases of non-compliance and exploitation in the workplace, especially when it comes to protecting the most vulnerable members of our community," Ms James said.

"My Agency will continue to be fair and balanced in its approach and will to operate in accordance with our [compliance and enforcement policy](http://www.fairwork.gov.au/about-us/our-purpose/compliance-and-enforcement-policy) ([www.fairwork.gov.au/about-us/our-purpose/compliance-and-enforcement-policy](http://www.fairwork.gov.au/about-us/our-purpose/compliance-and-enforcement-policy)) .

"However, employers who know their obligations and systematically fail to meet their workplace obligations should be on notice that we will use all the powers at our disposal," Ms James said.

Ms James said she looked forward to working with the community, including franchisors and their advocates and advisers, to help them understand the new laws and the ways they can contribute to building a culture of compliance with them.

"Now is the time for franchise systems that care about their reputation to take steps to ensure their employees receive their lawful entitlements," Ms James said.

"The Fair Work Ombudsman will work with any franchise that is serious about doing the right thing by its workers."

#### Summary of key changes

- Certain franchisors and holding companies become responsible for underpayments by their franchisees or subsidiaries where they knew, or reasonably ought to have known, about the contraventions and failed to take reasonable steps to prevent them
- A new category of serious contraventions has been introduced, with penalties that are ten times the current maximum where employers knowingly contravene and it is part of a systematic pattern of contravening conduct
- New penalties for providing Fair Work inspectors with false or misleading information or records, and new prohibitions for hindering or obstructing them
- The prohibitions against unreasonably requiring employees to make payments, commonly seen as cashback arrangements, have been strengthened and extended to prospective employees
- Maximum penalties for record-keeping and pay slip breaches have been doubled, and the maximum penalty for false or misleading employment records has been tripled. New penalties apply for giving false or misleading pay slips
- Employers who do not meet record keeping or pay slip obligations and cannot show a reasonable excuse, will need to disprove wage claims made in a court
- The Fair Work Ombudsman's evidence-gathering powers have been strengthened

Employers and employees can seek assistance at [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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