

Directors exposed as we lift the corporate veil

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By Natalie James, Fair Work Ombudsman

Each day, my Agency hears about what is happening in Australian workplaces from hundreds of workers and their bosses.

For the most part, the sentiment is that employers take their workplace responsibilities seriously and while they may make mistakes, most want to do the right thing and work with the Fair Work Ombudsman to fix problems when they arise.

The Fair Work Ombudsman Infoline receives, on average, 400,000 calls a year. My Agency last year recovered about \$23 million for 11,600 workers.

More than 99 percent of matters raised with my Agency were resolved outside of the courts.

But not all employers want to play by the rules or work with us. Some will invest all their energies into actively looking for ways to exploit legal frameworks in order to avoid their workplace responsibilities and gain unfair advantages over competitors.

To those people, I say take note of the record penalty of \$408,000 imposed this week against Brisbane-based 7-Eleven franchisee Mai Pty Ltd and its director for more than \$82,000 in wage underpayments and falsifying employee records.

That record is one thing, and adding weight to my warning is the court's strong comments about the deceitful conduct and need for deterrence in the retail and 7-Eleven contexts.

The judge described the conduct as serious and systematic contraventions of the employees' workplace rights and, like us at the Fair Work Ombudsman; he appears to have had enough of some people's contemptuous disregard of Australian workplace laws.

The tide is turning. The escape routes of sending a company into liquidation to avoid penalties and having to back-pay workers – such as the case in the previously tried 7-Eleven matters of Melbourne-based Bosen Pty Ltd in 2011 and Brisbane's Haider Pty Ltd last year – are now being shut down.

We are pursuing employers who cannot or will not pay by using every lever available to us to ensure wages that should have been paid to workers are put back into their hands.

And we are also striving to ensure those who breached their workplace obligations don't get the chance to do that again.

Directors and other accessories, including companies, in labour supply chains involved in the underpayment of workers can no longer hide behind the corporate veil.

They can be held responsible for the underpayments and have imposed on them orders which impact on their future business endeavours.

If we believe their behaviour may breach corporate laws, we will also refer those matters to ASIC.

It should now be clear to employers across all levels of operations that they can be personally penalised... and take a substantial hip pocket hit.

For Mr Lo, that hit was a significant \$68,000 personal penalty.

Owen Jennings, the former director of now wound-up Gold Coast security operation Step Ahead Security Services, also faces a hefty personal penalty of \$51,400 and wears the full brunt of yet another big win in the courts by the Fair Work Ombudsman in the past week.

The security company director, in addition to his penalty, has been made personally liable to back-pay eight employees almost \$23,000.

That matter, with total combined penalties of \$308,400, briefly held the title of the highest Fair Work Ombudsman penalty in Queensland but of even greater significance is the precedent set by the decision to make the director liable to back-pay wages.

It opens the door for the Fair Work Ombudsman to seek orders against any accessory in the labour supply chain – directors, contractors, franchisees and human resources managers included.

And it's not just the money, the Courts have shown a preparedness to make a range of orders – injunctions, freezing orders – to stop rogue employers breaching workplace laws.

Be warned if you have labour hire obligations within your workplace. 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 corporations who do the wrong thing.

Get your house in order, get the right advice and be prepared to work with us if we do find problems so we can build a culture of compliance in our workplaces.

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