

Accessorial, franchisor & holding company liability

What is liability?

Liability means being legally responsible for a wrong doing. Employers can be liable when they haven't followed workplace laws. Liability also includes being responsible for fixing the wrong doing, such as fixing any underpayments, or paying employee entitlements such as annual leave and sick leave.

Employers who are liable for not following workplace laws risk receiving penalties if we decide to take a matter to court (www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation) .

This applies to any employer who is covered by the Fair Work system (www.fairwork.gov.au/About-us/Legislation/The-Fair-Work-system/default) and who breaches the Fair Work Act 2009 (FW Act).

There are also provisions in the FW Act which say that third parties can be held responsible as well. A person or company can be held responsible if they:

- were 'involved in' an employer's contravention. This is called accessorial liability and can affect individuals like human resources officers, accountants, adviser and book keeping services
- are a franchisor and their franchisee didn't follow workplace laws (this is franchisor liability)
- are a holding company and their subsidiary didn't follow workplace laws (this is holding company liability).

In these situations, the responsibility for breaching the workplace law, and the penalties that could apply for these breaches, can extend to these third parties.

A person or company can only be held responsible as an accessory if they were involved in the contravention. Franchisors and holding companies can be held responsible for their franchisees' and subsidiaries' conduct even if they didn't know about the actual contravention.

Find out more about:

- [accessorial liability](#)
- [franchisor and holding company liability](#).

Accessorial liability

Accessorial liability occurs when a person or company is involved in the contravention of a workplace law. When this happens, they're treated the same way as the employer responsible for the contravention. They can be ordered by a court to pay employees' unpaid wages and entitlements, as well as penalties for their involvement in the contravention.

Being involved in a contravention means the person or company:

- assisted, recommended or caused the contravention
- influenced the contravention (eg. by making threats or promises)
- was concerned in or was a party to the contravention, or
- conspired with others, which resulted in the contravention.

A person or company can include:

- a company director
- a human resources manager or other manager
- a payroll officer
- an accountant
- a business involved in the company's [supply chain](http://www.fairwork.gov.au/find-help-for/contracting-labour-and-supply-chains) (www.fairwork.gov.au/find-help-for/contracting-labour-and-supply-chains) .

The accessorial liability provisions allow us to hold anyone involved in a contravention accountable, even if the business has gone into liquidation.

What can you do to reduce your risk?

Make sure you know which workplace laws apply to your business and employees before making decisions on behalf of your

company or providing advice to your colleagues and clients. You can:

- use our [Pay Calculator \(https://calculate.fairwork.gov.au/findyouraward\)](https://calculate.fairwork.gov.au/findyouraward) to find minimum pay rates
- use our [Leave Calculator \(https://calculate.fairwork.gov.au/leave\)](https://calculate.fairwork.gov.au/leave) to calculate leave balances
- use [Find my award \(www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/\)](http://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/) to find the award that applies to an employee
- read the [National Employment Standards \(www.fairwork.gov.au/employee-entitlements/national-employment-standards\)](http://www.fairwork.gov.au/employee-entitlements/national-employment-standards) for information about minimum entitlements
- download our [templates \(www.fairwork.gov.au/how-we-will-help/templates-and-guides\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides) , including our pay slip and record-keeping templates
- register for [My account \(www.fairwork.gov.au/my-account/fwosignin.aspx\)](http://www.fairwork.gov.au/my-account/fwosignin.aspx) to ask us questions and get tailored information for you.

Companies that outsource their work need to make sure they're not also outsourcing non-compliance. We have information and guides to help you [manage your labour contracting \(www.fairwork.gov.au/find-help-for/contracting-labour---supply-chains/managing-your-labour-contracting\)](http://www.fairwork.gov.au/find-help-for/contracting-labour---supply-chains/managing-your-labour-contracting) .

Franchisor and holding company liability

Franchisors and holding companies can be held responsible when they have a significant amount of influence or control over their franchisee or subsidiary.

There are lots of different franchising models that franchisors can choose from when setting up their business. This means that the degree of control a franchisor has over its franchisees can differ from franchisor to franchisor. Whether a franchisor will be held legally responsible for a franchisee's conduct depends on how much they influence the management and operational decisions of their franchisee.

You can read more information in our [Find help for franchises \(www.fairwork.gov.au/find-help-for/franchises/default\)](http://www.fairwork.gov.au/find-help-for/franchises/default) section.

A body corporate is a subsidiary of another body corporate (the holding company) if the holding company:

- controls who's in the subsidiary's board of directors
- can control voting in the subsidiary's general meetings (ie. by casting the majority of votes)
- holds the majority of the subsidiary's issued shares.

A franchisor or holding company doesn't have to know about the exact contravention that occurred (eg. an employee not getting paid the correct penalty rates). They can still be held responsible if they:

- were reasonably expected to know that the contravention would occur
- knew the franchisee or subsidiary was likely to breach a workplace law similar to the actual contravention.

What can you do to reduce your risk?

Franchisors and holding companies won't be held responsible if they can show they took reasonable steps to prevent a contravention (or one of a similar kind).

Make sure your franchisees or subsidiaries understand the relevant workplace laws and know their obligations. Visit our [Franchisors page \(www.fairwork.gov.au/find-help-for/franchises/franchisors\)](http://www.fairwork.gov.au/find-help-for/franchises/franchisors) for tips on how to enable, support and monitor compliance in a franchise.

You can also provide your franchisees and subsidiaries with information and tools to encourage compliance with the FW Act, such as:

- a copy of our Fair Work Handbook found on our [Franchises page \(www.fairwork.gov.au/find-help-for/franchises/default\)](http://www.fairwork.gov.au/find-help-for/franchises/default)
- resources for [Small business \(www.fairwork.gov.au/find-help-for/small-business\)](http://www.fairwork.gov.au/find-help-for/small-business)
- [tips for hiring new staff \(www.fairwork.gov.au/find-help-for/small-business/hiring-employees\)](http://www.fairwork.gov.au/find-help-for/small-business/hiring-employees)
- [our Online learning centre](http://www.fairwork.gov.au/find-help-for/small-business/hiring-employees) [\(http://fairwork.cls.janison.com/local-theme/FWO/pages/guest.html\)](http://fairwork.cls.janison.com/local-theme/FWO/pages/guest.html) to take our Record-keeping & Pay Slips course
- our [Workplace Basics quiz \(www.fairwork.gov.au/how-we-will-help/online-training/workplace-basics\)](http://www.fairwork.gov.au/how-we-will-help/online-training/workplace-basics) to test their knowledge
- our [step-by-step guide on How to fix an underpayment \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/how-to-fix-an-underpayment\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/how-to-fix-an-underpayment) .

Source reference: [Fair Work Act 2009 s.550 and 558 \(https://www.legislation.gov.au/Series/C2009A00028\)](https://www.legislation.gov.au/Series/C2009A00028)

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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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