



**impact
of NON
compliance**

We I come !

Today, its all about you, your business and compliance (or not) with legislation and your people – e.g.

- ❑ Fair Work Act 2009 (Cwth) (the Act)



My personal philosophy is this.
I can deal with *Anything*.
Anything.
So long as I know what *Anything* is.





You cannot contract outside the law
and it CAN be a little bit sneaky!

Things that might make you think... hmmm

Most businesses – and that includes any business that employs only 1 person – is covered by Australian employment laws including *The Fair Work Act 2009* and *Fair Work Regulations 2009*.

What are the risks if you fail to comply with these laws...

- big fines
- penalties
- expensive back-pay orders
- damaging employee claims; and
- personal fines for accessorial liability.

Its important to create systems with supporting policies and procedures, so we no longer have to think... just tick the box!

What is the difference... FWC v. FW0

□ The Fair Work Commission (FWC)

■ What it can do

- make the rules
- deal with applications relating to ending employment including unfair dismissal, unlawful termination or general protections
- deal with applications for an order to stop bullying at work
- make workplace determinations, hear and decide on equal remuneration claims, and deal with applications about transfer of business, stand down, general protections and right of entry disputes help employees and employers bargain in good faith and to make, vary or terminate enterprise agreements
- make orders about industrial action, including strikes, work bans and lock outs
- provide mediation, conciliation and in some cases hold public tribunal hearings to resolve various individual and collective workplace disputes

■ What it can't do

- provide advice on entitlements under an award or registered agreements
- enforce minimum pay and award entitlements..



What is the difference... FWC v. FWO

□ The Fair Work Ombudsman (FWO)

▪ What they do

- Enforces the rules
- provide reliable and timely information about Australia's workplace relations system
- educate people about fair work practices, rights and obligations
- resolve workplace issues by promoting and monitoring compliance with suspected breaches of workplace laws, awards and registered agreements
- enforce workplace laws and seek penalties for breaches of workplace laws
- enforce certain orders made by the Fair Work Commission.

▪ What they don't do

- investigate unfair dismissal and unlawful termination applications
- make changes to the legislation, awards or registered agreements
- investigate bullying and harassment complaints.



Who or what are Fair Work Inspectors

□ Government officials appointed by the Fair Work Ombudsman

- have the power to enter a workplace at any time during working hours or at any other time the Fair Work Inspector believes is necessary for compliance purposes, if they reasonably believe:
 - the Fair Work Act 2009 or a Fair Work instrument (e.g. an award or agreement) applies to the workplace
 - records or documents relevant to compliance are on the premises (including documents on a computer)
 - issue 'on the spot' fines where they reasonably believe an employer has contravened the record-keeping and pay slip obligations contained in the Fair Work Act 2009 and the Fair Work Regulations 2009.



Record keeping & pay slip obligations

□ Record keeping

- Make and keep accurate and complete records for all employees (e.g. time worked and wages paid)
 - in a form that is readily accessible to a Fair Work Inspector
 - in a legible form and in plain simple English
 - kept for seven years
 - not be altered unless for the purposes of correcting an error
 - not be false or misleading to the employer's knowledge
- Employee records are private and confidential.
 - Generally, no one can access them other than the employee, their employer and relevant payroll staff.
 - Employers must make copies of employee records available at the request of an employee or former employee.
 - Fair Work Inspectors and organisation officials (such as a trade union) may access employee records (including personal information) to determine if there has been a contravention of relevant Commonwealth workplace laws.



Record keeping & pay slip obligations

□ What is record keeping – compliance

- General business and employee information
- Pay
- Hours of work
- Leave
- Superannuation contribution
- Individual flexibility arrangement
- Annualised wage arrangement
- Guarantee of annual earnings
- Termination



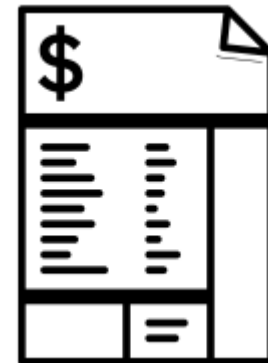
□ What is record keeping – best practice

- Performance improvement
- Disciplinary management
- Grievance
- Bullying, intimidation, harassment, sexual harassment, victimisation

Record keeping & pay slip obligations

□ Pay slip obligations

- within one working day of pay day (even if the employee is on leave) in electronic form or hard copy
- what information must be included on a pay slip?
 - the employer's name
 - the employer's ABN
 - the employee's name
 - the date of payment
 - the pay period
 - the gross and net amount of payment
 - any loadings (including casual loading), monetary allowances, bonuses, incentive-based payments, penalty rates, or other separately identifiable entitlement paid – e.g. the hourly rate includes the relevant casual loading.



Record keeping & pay slip obligations

□ Pay slip obligations

▪ A pay slip must include:

- If the employee is paid an hourly pay rate, the ordinary hourly pay rate, the hours worked at that rate and the amount of payment made at that rate
- If the employee is paid an annual rate of pay (salary), the rate as at the last day in the pay period
- Any deductions
 - common deductions are income tax, health insurance and union fees
 - whatever the deductions, the employee must authorise it in writing and/or it is authorised by or under an award or order of the FWC and/or is authorised by or under a law or an order of the court.
- Superannuation contributions for the benefit of the employee
 - the amount of each contribution the employer made or is required to make during the pay period
 - the name of any superannuation fund into which the contributions will be made



What are the risks if you do not comply...

- ❑ On the spot fines by the Fair Work Inspector (infringement notice)
 - Maximum fines payable from an infringement notice
 - \$630 per contravention for an individual
 - \$3,150 per contravention for a business
 - In 2019-2019, Fair Work Inspectors issued almost \$500,000 in 'on the spot' fines.

- ❑ Court ordered penalties
 - \$12,600 per contravention for an individual
 - \$63,000 per contravention for a business
 - Orders:
 - to pay the employee what they're owed (+ interest)
 - granting an injunction or interim injunction
 - awarding the employee compensation for loss suffered
 - to reinstate an employee – i.e. employee must be given their job back
 - to correct discrimination.
 - In 2018-19, the Fair Work Ombudsman secured more than \$4.4 million in court-ordered penalties.



What are the risks if you do not comply...

□ Personal fines

- HR managers, payroll and administration personnel and advisors may be liable as an accessory if their employer breaches the Fair Work Act.
- More than 90% of all litigations commenced by the FWO last financial year sought orders against accessories – e.g. a business director or a key advisor such as a HR manager, payroll officer, accountant or bookkeeper.
- If a key advisor fails to correctly explain the rules to their employer, make it clear when the employer is in danger of breaking the rules or is involved in breaches of the law, that key advisor risks being held personally liable under Section 550 of the Act.
- Accessorial liability issues for individuals often arise in relation to breaches of the National Employment Standards (NES), sham contracting, adverse action and discrimination.
- Fines outlined on previous slide apply.

Personal Fines for Breaching Fair Work Laws

- Are you responsible for payroll or administrative functions?
- Do you try and obtain accurate advice?
- Do you alert clients to possible breaches?
- Do you actively question instructions if you have doubts regarding legality?

If not, you may be at risk of personal fines under Section 550 of the Fair Work Act 2009.

Case Study: Crystal Car Wash - Payroll Manager fined \$10,000 for placing employees on sham contracts and underpaying employees.



Other compliance areas...

- ❑ Sham contracting
- ❑ Underpayments
- ❑ Adverse action
- ❑ Unfair dismissal
- ❑ Discrimination
- ❑ Managing redundancy
- ❑ Employing illegal workers
- ❑ Fair Work Information Statement
- ❑ Termination process
- ❑ Written notice before termination
- ❑ Breaching other workplace laws – e.g. racial discrimination act 1975
- ❑ Wage increases – 1.75% from: 1 July, 1 November and 1 February

Fair Work
OMBUDSMAN

Fair Work Information Statement
Employers must give this document to new employees when they start work

IMPORTANT INFORMATION ABOUT YOUR PAY AND CONDITIONS

Find out more about your workplace entitlements and obligations during the impact of coronavirus at www.fairwork.gov.au/coronavirus

Employees in Australia have entitlements and protections at work, under:

FAIR WORK LAWS

- minimum entitlements for all employees
- include the National Employment Standards

AWARDS

- set minimum pay and conditions for an industry or occupation
- cover most employees in Australia

ENTERPRISE AGREEMENTS

- set minimum pay and conditions for a particular workplace
- regulated and approved through formal process

EMPLOYMENT CONTRACTS

- provide additional conditions for an individual employee
- can reduce or remove minimum entitlements

Find your award at www.fairwork.gov.au. Check if your workplace has an enterprise agreement at www.fwc.gov.au/agreements.

Ⓜ PAY Your minimum pay rates are in your award or enterprise agreement. If there is no award or agreement for your job, you must get at least the National Minimum Wage. You can't agree to be paid less. Minimum pay rates are usually updated yearly. Find out where you should get it at www.fairwork.gov.au/minimum-wage.

NATIONAL MINIMUM WAGE FROM 1 JULY 2020

Full-time \$19.84/hour
Full-time or part-time

Part-time \$24.80/hour
Less than full-time

This is the adult minimum rate for employees with no award or enterprise agreement. Lower rates may apply to juniors, apprentices and employees with disability.

Use our free calculator to check your pay, leave and termination entitlements at www.fairwork.gov.au/act

Ⓜ NATIONAL EMPLOYMENT STANDARDS

These are minimum standards for all employees. Rules and exclusions may apply. Your award or agreement may provide more. Find more information on the National Employment Standards at www.fairwork.gov.au/nes.

	Full-time and part-time employees	Casual employees
Annual leave	✓ 4 weeks paid leave per year pro rata for part-time employees + 1 week for eligible shift workers	✗
Personal leave* (sick or carer's leave)	✓ 10 days paid leave per year	✗
Carer's leave	✓ 2 days unpaid leave per permissible occasion (if no paid personal leave left)	✓ 2 days unpaid leave per permissible occasion
Compassionate leave	✓ 2 days paid leave per permissible occasion	✓ 2 days unpaid leave per permissible occasion
Family & domestic violence leave	✓ 5 days unpaid leave per 12 months	✓ 5 days unpaid leave per 12 months
Community service leave (jury service)	✓ 10 days paid leave with make-up pay + unpaid leave as required	✓ Unpaid leave as required
Voluntary emergency management activities	✓ Unpaid leave as required to engage in the activity	✓ Unpaid leave as required in the activity
Long service leave	✓ Paid leave amount and eligibility rules vary between states and territories	✗ Varies between states
Parental leave (eligible after 12 months employment)	✓ 12 months unpaid leave (can extend up to 24 months with employer's agreement)	✓ 12 months unpaid leave and 10 days leave up to 24 months with agreement
Maximum hours of work	✓ Full-time employees – 38 hours per week + reasonable additional hours Four time and casual employees – 38 hours or employers' ordinary weekly hours (whichever is reasonable)	✗ An unpaid day off / task you can refuse (Friday 50)
Public holidays	✓ A paid day off (paid normally work if asked to work you can refuse, if reasonable to do so)	✗
Notice of termination	✓ 15 weeks notice (or pay in lieu of notice) based on length of employment, and age	✗
Redundancy pay (eligible after 12 months employment)	✓ A 16 weeks pay based on length of employment (some industries exempt)	✗

*The High Court is currently considering the method of accruing and taking paid/permissible leave under the National Employment Standards. This document reflects the state of the law as it applies to different employees, but is subject to any change at law. See also www.fairwork.gov.au/news/updates-and-views.

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IMPORTANT INFORMATION ABOUT YOUR PAY AND CONDITIONS

Ⓜ FLEXIBILITY

After 12 months employment, you can make a written request for flexible working arrangements if you're 55 or over, have a disability, are caring for someone in a family member (or are supporting a family or household member who is), or are the parent of, or have caring responsibilities for, a child of school age or young/adult who is unable to work part-time care for the child. This includes employees returning from parental/adoption leave able to work part-time care for the child. Your employer must respond in writing within 21 days. They can only say no on reasonable business grounds. You and your employer can also negotiate an individual flexibility arrangement. This would change how you can use your award or enterprise agreement to you. An individual flexibility arrangement must be a genuine choice – it can't be a condition of employment – and it must leave you better off overall. Find out more at: www.fairwork.gov.au/flexibility

DID YOU KNOW?

You can create a free My account to save your workplace information in one place at www.fairwork.gov.au/register

You can find free online courses to help you start a new job or have difficult conversations at work, visit: www.fairwork.gov.au/learning

The Record My Hours app makes it quick and easy to record the hours you work. It's free on the App Store and Google Play.

Ⓜ ENDING EMPLOYMENT

When your employment ends, your final pay should include all outstanding entitlements, such as wages and unpaid annual leave and long service leave.

You may be entitled to notice of termination, or pay instead of notice. If you're dismissed for serious misconduct, you're not entitled to notice. If you resign you may have to give your employer notice. To check if notice is required and what should be in your final pay visit: www.fairwork.gov.au/ending-employment

If you think your dismissal was unfair or unlawful, you have 21 calendar days to lodge a claim with the Fair Work Commission. Rules and exceptions apply. Find out more at: www.fairwork.gov.au/termination

Ⓜ PROTECTIONS AT WORK

Employers must give protections at work. You can't be treated differently or worse because you have or exercise a workplace right, for example, the right to request flexible working arrangements, take leave or make a complaint or enquiry about your employment. You have the right to join a union or choose not to, and to take part in lawful industrial activity or choose not to. You also have protections when temporarily absent from work due to illness or injury from discrimination, bullying and harassment, coercion, misrepresentation, sham contracting, and unfair influence or pressure. Find out more at: www.fairwork.gov.au/protections

Ⓜ AGREEMENT MAKING

Enterprise agreements are negotiated between an employer, their employees, and any employee representatives (e.g. a union). This process is called bargaining and has to follow set rules. The Fair Work Commission checks and approves agreements. For information about making, varying, or terminating an enterprise agreement visit: www.fwc.gov.au/agreements

Ⓜ TRANSFER OF BUSINESS

If a transfer of business occurs, your employment with you will end. If you're employed by the new employer within three months to do the same (or similar) job, some of your entitlements might carry over to the new employer. This may happen if, for example, the business is sold or work is outsourced. Find out more at: www.fairwork.gov.au/transfer-of-business

Ⓜ RIGHT OF ENTRY

Union officials with an entry permit can enter the workplace to talk to workers that they're entitled to represent, or investigate suspected safety issues or breaches of workplace laws. They must comply with certain requirements, such as notifying the employer, and can inspect or copy certain documents. Strict privacy rules apply to the permit holder, their organisation and your employer. Find out more at: www.fwc.gov.au/entry-permits

WHO CAN HELP?

FAIR WORK OMBUDSMAN

- provides free and advice about pay and entitlements
- free calculators, templates and online courses
- helps resolving workplace issues
- investigates and enforces breaches of workplace laws.

www.fairwork.gov.au - 13 13 14

FAIR WORK COMMISSION

- hears cases of unfair dismissal, unlawful termination, bullying, discrimination or adverse action at work
- approves, varies and terminates enterprise agreements
- issues entry permits and resolves industrial disputes.

www.fwc.gov.au - 1300 799 675

If you work in the commercial building industry the Australian Building and Construction Commission can help. www.abcc.gov.au - 1800 003 338

2018–2019 FWO report reveals...

❑ On-the-spot fines

- Fair Work Inspectors issued \$479,900 in on-the-spot fines in 2018-2019.
- Inspectors conducted more than 2800 workplace audits.
- Inspectors issued 563 infringement notices.
- Inspectors issued 247 compliance notices, more than \$1 million in unpaid wages recovered.

❑ Court-ordered penalties

- The FWO secured \$4,400,772 in court-ordered penalties.
- More than 50% of litigations filed involved businesses in the fast food, restaurants and cafe sector.
- The FWO had 67 matters before the courts as of 30 June 2019.



2018–2019 FWO report reveals...

❑ Total monies recovered

- \$40,204,976 in total monies recovered for 17,718 workers.
- Record penalty for failing to comply
- Record penalty of \$105,000 against a business and director for failing to comply with FWC Orders

❑ Biggest enforceable undertaking

- \$447,717 for 1174 cleaners.

❑ Number of disputes

- 29,130 in completed disputes in 2018-2019.
- Anonymous reports to the FWO increased, with over 16,000 reports received.
- Over 1200 reports made in languages other than English.



FWO priorities for 2020–2021...

□ Priority sectors and issues

- large corporate underpayments
- fast food, restaurants and cafés
- horticulture
- franchise arrangements
- sham contracting.

□ FWO approach

- provide education, advice, tools & resources
- support small business and those sectors hardest hit by COVID-19
- uphold the integrity of the JobKeeper scheme
- prioritise vulnerable workers.



The FWO says it will continue to monitor compliance broadly with a mix of proactive and reactive regulatory work – e.g. finalising compliance activities commenced prior to the COVID-19 pandemic to ensure employees receive their lawful entitlements.

COVID-19...

□ Workplace

- Working from home arrangements
- Return to work plan
- Plan for what happens if employee diagnosed with COVID-19.

□ JobKeeper

- Ensure payment to employee in accordance with government stipulation
- Continue to accrue employee leave entitlements based on the hours worked prior to COVID-19
- Can direct an employee to reduce hours (not wages) and take annual leave (must still consult and employee cannot unreasonably refuse)
- Ensure all records are kept including JobKeeper nomination form.

□ Stand-down

- Section 524 of the Act
- Awards

JOBKEEPER PAYMENT

- ✓ NEW PAYMENT TO SUPPORT BUSINESSES AND TO KEEP AUSTRALIANS IN JOBS.
- ✓ \$1,500 PER FORTNIGHT PER ELIGIBLE EMPLOYEE.

COVID-19...

❑ Breaching of the WH&S Qld

▪ Range from:

- Category 1: \$50,000 for an individual worker; \$100,000 for an office and \$500,000 for a corporation; offences will be prosecuted in the Magistrates Court.
- Category 2: \$150,000 for an individual worker; \$300,000 for an office and \$1.5m for a corporation; offences will be prosecuted in the Magistrates Court.
- Category 3: \$300k/5yrs jail individual worker, \$600k/5yrs jail for an officer and \$3m for a corporation where the employee is at serious risk of death/injury; offences involving reckless conduct will be prosecuted in the District Court; and
- Industrial manslaughter where there is a death of employee it is a maximum of 20 years imprisonment for an individual and \$10m for a corporation.
- Visit WorkCover Queensland - penalties



COVID-19...

❑ Breaching JobKeeper scheme

- Minimum of 60 penalty units (\$12,600) for breach of minimum payment guarantee up to \$126,000 for a serious contravention

Provision	Description	Penalty
Section 284-75 in Schedule 1 to the <i>Taxation Administration Act 1953</i>	Administrative penalties for false and misleading statements	A financial penalty of up to 75 per cent of the amount of any overpayment
Section 8C of the <i>Taxation Administration Act 1953</i>	Criminal offence for a failure to comply with requirements under the taxation law	Imprisonment for up to 12 months and a fine of up to 50 penalty units (250 penalty units for corporate entities)
Sections 8K and 8N of the <i>Taxation Administration Act 1953</i>	Criminal offences for making false or misleading statements to taxation officers	Imprisonment for up to 12 months and a fine of up to 50 penalty units (250 penalty units for corporate entities)
Section 135.2 of the Criminal Code	Obtaining financial advantage	Imprisonment for up to 12 months
Section 134.2 of the Criminal Code	Obtaining financial advantage by deception	Imprisonment for up to 10 years
Section 135.4 of the Criminal Code	Conspiracy to defraud	Imprisonment for up to 10 years

The Government has outlined the penalties for employers or employees if they break the law.
(Supplied: Treasury Department)

PRESENTER...

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