Company Directors Personally Liable for Breaches of the Fair Work Act

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It is not commonly known that the *Fair Work Act 2009* contains a section that operates similar to the accessorial liability provisions in the Corporations Act.

Company directors, executives and human resource managers should be aware that they could be exposed to personal liability for their involvement in breaches of the Fair Work Act that are committed during their management of the company.

To date, there are few cases where this section has been invoked. However, we are seeing more employment law cases where the Fair Work Ombudsman has made use of the section.

This has resulted in individual directors of employer companies being held personally liable for the payment of penalties and compensation to employees.

Section 550

Section 550 of the Fair Work Act imposes liability on a person involved in a contravention of a civil remedy provision. Specifically a person who is "*involved*" in an employer's contravention of a civil remedy provision, is also taken to have contravened that provision under employment law.

For the purposes of this section, the word "involved" includes both active involvement with actual knowledge, through to involvement where the individual does not know or appreciate that the conduct is unlawful.

Where an individual is named as a respondent to contravention proceedings, they are also personally exposed to penalty and compensation orders.

How has this section worked in practice?

In a recent decision of the Federal Circuit Court of Australia[1], Judge Jarrett ordered that under workplace law, the employer entity and the sole director were jointly and severally liable for the underpayment of $22,779 to employees.

The employer and the director of the employer admitted to contraventions involving the underpayment of wages contrary to the relevant modern award. Given the admissions of guilt, the Court's role was to determine appropriate remedies.

In addition to steep penalties of $257,000 for the employer company and $51,400 for the individual director, the Court ordered that both the company and the director were liable under workplace law, for the back payment of wages to the employees.

The penalties were very high in this case because the director was a repeat-offender (and therefore knew his workplace law obligations), he showed no contrition, the underpayments were done deliberately and no steps were taken to rectify the underpayment for the employees.

Implications for employers and directors

The orders in this case (and in similar cases) demonstrate that section 550 of the Fair Work Act empowers the Court to "*lift the corporate veil*" to require a director to pay compensation for the company's breach of the *Fair Work Act*.

Accordingly, even in circumstances where an employer company enters liquidation or takes other steps to avoid paying employees, the director/s can still be exposed to personal liability for any breaches.

It is important to also note that this section extends personal liability to anyone found to be "*involved*" in contraventions of workplace law. Accordingly, this could include company executives and human resource managers.

Questions/Assistance

If you have any questions in relation to this article or if you would like any assistance in other employment law matters including employment contracts and matters before the Fair Work Commission, please feel free to speak with or email one of our specialist employment lawyers on (02) 9635 7966 or info@matthewsfolbigg.com.au

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[1] *Fair Work Ombudsman v Step Ahead Security Services Pty Ltd & Anor* [2016] FCCA 1482 (17 June 2016)