

Update - The Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 Passes Parliament

September 2017

What you need to know

The *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* (**Bill**) passed through Parliament on the 5 September. The Bill amends the *Fair Work Act 2009* (Cth) (**FW Act**) to provide a range of measures designed to crack down on exploitative employment practices.

The new laws will have significant implications for franchisors, holding companies and employers in respect of compliance with the Act. Key changes to the FW Act include:

1. introducing higher financial penalties (10 times the current maximum penalties) for serious breaches of workplace laws. In such cases maximum penalties of \$630,000 and \$126,000 per contravention could apply to corporations and individuals respectively;
2. tripling the maximum penalties for false or misleading employment records;
3. doubling the maximum penalties for record-keeping and pay-slip breaches (\$12,600 per contravention for individuals and \$63,000 for companies);
4. making franchisors that have a significant degree of influence or control over the franchisee's affairs liable for underpayments by their franchisees where they knew, or ought reasonably to have known, of the contraventions and failed to take reasonable steps to prevent them;
5. making holding companies responsible for certain contraventions by its subsidiaries where the holding company fails to take reasonable steps to prevent those contraventions occurring;
6. making officers of franchisors or holding companies potentially liable as an accessory to a contravention;
7. expressly prohibiting employers from unreasonably requiring their employees to make payments commonly known as 'cashback' arrangements;
8. strengthening the powers of the Fair Work Ombudsman to investigate breaches of workplace laws which exploit vulnerable workers;
9. adopting a new, broader definition of 'franchise' to include certain intellectual property licensing arrangements; and

10. imposing the onus on employers to disprove wage claims if the employer does not meet record keeping or pay slip obligations and cannot provide a reasonable excuse.

For background information on the Bill, please read our earlier article “*What you need to know about the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*” or contact Employer Assist.

When the changes will come into effect

The new laws are not retrospective in operation and will apply from the day after the Bill receives royal assent. This usually happens within a couple of weeks after a Bill is passed by Parliament. The new franchisor and holding company liability, will start six weeks after the Bill receives royal assent.

What you need to do now

We recommend that franchisors, holding companies and employers seek advice about their obligations.

Employer Assist can assist franchisors, holding companies and employers to identify and manage their risk.

As HVIA members, you have access to free workplace relations advice from Employer Assist as well as access to a broad range of services at discounted member rates.

Contact us

If you require any further information or advice on the matters set out in this article, please contact Employer Assist on **1300 694 842** or **hvia@employerassist.com.au**.

This article is intended for information purposes only and should not be regarded as legal advice. Please contact Employer Assist by Industry Legal Group for specific legal advice.

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