



A PEOPLE FACTOR GROUP NEWSLETTER

FAIR WORK OMBUDSMAN

As we move into the new industrial relations landscape we see that the Fair Work Australia Ombudsman is taking over the role of the Workplace Ombudsman and continuing to monitor and promote compliance to federal workplace laws.

Powers of inspection are the primary tools used by the ombudsman and is being used significantly during this transition. We have previously mentioned that NSW was the first cab of the rank but all the other states will soon follow. The role of Fair Work Inspectors is to enforce compliance with applicable awards, investigate complaints and generally insure businesses are doing the right thing.

There are a number of strategies that you can enact upon at this point. Firstly, if you have nothing to fear I suggest that you be proactive and contact Fair Work and organise an inspector to pay you a visit. Secondly, if you are unsure you can call the People Factor Group and we will provide you with an audit service to ensure compliance or advise you of where you stand and what needs to be done. Thirdly, and I personally don't endorse this strategy, which is to wait until you receive a letter of notification in the mail from the Ombudsman's department. These in many cases are just random undertakings that the department is currently utilising which attempts to force and encourage voluntary rectification.

It should be pointed out that the Fair Work Ombudsman's department's primary focus is very much to encourage the individual to be compliant.

The Inspectors have several options available to them if they identify a breach of the Act:

- The issuing of a compliance notice
- The issuing of a letter of caution
- The securing of an enforcement undertaking
- The referral of the matter
- The commencement of litigation
- Or no further action

These actions can be undertaken either as part of a complaint or an audit. So an audit of your current compliance now makes a lot of sense.

The Fair Work Ombudsman does not accept ignorance or misunderstanding with regard to minimum pay requirements. You will not avoid prosecution if you are in error regardless. The Fair Work Ombudsman's policy of educating business and the publication of policy statements means that mitigating any serious non-compliance and the reduction of any penalties on the basis of ignorance to these obligations is unavailable.

We have stated the penalties previously but it is worth reminding every one again. The penalties: up to \$33,000 may be imposed on companies and \$6,000 on individuals' for each breach, as well as the requirement to pay any money s owed to the employee. The fines are based on each occasion; so if the issues are not fixed, you can guess that you will be fined again but pay a lot more on each and every subsequent occasion.

CASE STUDY

A recent case in Brisbane left a small business paying a fairly hefty fine as well as payment to the employee because of the stupidity of the owner threatening to terminate the employee if the employee contacted the ombudsman. So in this case not only did the company get fined but the director who was the company owner got an additional fine on top of this, as well as a public naming and shaming. Trust me you don't want to end up there!!

This is one way the Ombudsman provides education - you can look up this case and others on the [Fair Work Ombudsman's](#) website along with a listing of prosecutions. Have no doubt this strategy is very effective in exposing the risks of non-compliance I would urge you all to make appropriate investigations into your obligations and compliance using appropriately skilled and qualified auditors.

The Ombudsman in deciding whether proceedings should commence will reflect on the nature of the breach, the issue of public matters, as in the level of public concern, the significance of the breach, the integrity, ethics and character of the perpetrators and other departmental considerations.

The Fair Work Ombudsman may also utilise the "breach bargaining" procedure to secure compliance. This is more of an informal approach requiring the parties and the Ombudsman's department to negotiate a remedy for the non-compliance, a far better outcome for all concerned.

The content of this ezine is intended to provide a general guide to the subject matter. Specialist advice should be sought for specific individual circumstances.

P.S.

1st March - An employer was ordered to pay a redundant tradesman \$10,000 after he failed to receive his full severance entitlement. Prior to his redundancy, the employee worked for the employer for 13 years. He lodged a complaint with the Fair Work Ombudsman when he failed to receive his full severance entitlement after being made redundant.

The employer promptly paid the employee the severance money that was due to him after Fair Work inspectors contacted the company. The Ombudsman stated that it preferred to work with employers and to provide assistance in rectifying any non-compliance issues. However, the Ombudsman cautioned employers and advised that it remained the responsibility of the employer to ensure that the correct amounts were paid to employees or fines up to \$33,000 per breach could be applied.