

CAN A COMPANY DIRECTOR BE LIABLE FOR UNPAID EMPLOYEE ENTITLEMENTS?

Traditionally operating a business through a company has been seen as a way of protecting personal assets from a business' creditors. In recent years the ATO has extended its reach to company directors making them liable to PAYG, super guarantee and GST liabilities even after they resign.

Underpayment of employees wages and other entitlements can also lead to directors and/or managers becoming personally liable for the payment. The Fair Work Act imposes an "accessorial liability" on directors and/or managers where they are "involved" in the contravention of the Act.

The contraventions may be underpayment of wages, failure to pay allowances and holiday entitlements and making unlawful deductions from an employee's wages.

To be "involved" in a contravention the person has be found to have:

- aided, abetted, counselled or procured the contravention; or
- induced the contravention, whether by threats or promises or otherwise; or
- been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- conspired with others to affect the contravention.

A person will be liable where they had knowledge of the facts of the contravention, is an intentional participant in the contravention with actual knowledge turned a blind eye to the contravention regardless of whether they knew that what occurred was a contravention.

Some examples of this include:

A security provider underpaid employees \$22,700. The director was found to be liable because he set the wage rates and ignored complaints from employees of underpayment.

Because there were concerns the company may be wound up before the employees were paid the company and the directors were made jointly responsible for the unpaid wages and fines.

A restaurant underpaid employees. Before proceedings to recover the wages commenced, the business was sold. The court ordered the company to pay the wages and the director to pay the fines. The directors didn't pay the fines so the director's wages from a new employer were garnished.

A HR manager responsible for payment of wages made unlawful deductions from employee wages. The HR manager said he did not know the deductions were unlawful.



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John has passionately practiced law for more than 25 years, assisting clients in litigation, family law, estate and business planning, and commercial and property law.

He established Greenhalgh Pickard in 2003, which has since grown to be one of the most successful regional law practices in Queensland. In dealing with his clients' real-world issues, he is in demand for his practical and insightful business advice.



The court found that the HR manager knew the deductions were unlawful from previous inspections by the Fair Work Ombudsman (FWO).

The employer has previously submitted false wage records to the FWO and the HR manager was aware of this. The HR manager was ordered to pay a penalty.

Directors can be held personally liable if found to have breached the parameters of the Fair Work Act. It is important to seek legal advice to ensure you are compliant with the legislative requirements as a Company Director.

If you require any legal or accounting advice for either personal or commercial offerings, get in touch with us today on (07) 5444 1022 or visit www.gpla.com.au to learn more.