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LawTalk Blog



The 7 Eleven wage abuse scandal has prompted significant changes to laws to protect vulnerable workers

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The 7 Eleven wage abuse scandal created an uproar after exploiting vulnerable workers and resulted in new legislation to protect vulnerable workers.

The "Seven 11" wage abuse scandal

Many of you will remember the [scandal involving "Seven 11" franchises](#). Many of these stores, it was discovered, had been seriously underpaying their (largely young, migrant) workforce either by paying significantly less than legally required or, alternatively, by paying the legal minimum but demanding that staff "pay back" a component of their wages to the employer.

Investigations subsequently revealed that the franchisor (the Seven 11 organisation) had effectively caused the situation because the franchising arrangements were such that it was impossible for the stores to make a profit unless they underpaid their staff.

This situation drew public attention to the fate of vulnerable workers in our society, particularly young workers and overseas workers. These workers are often considered to be "vulnerable" because, either they are unaware of their legal rights or, they are aware of their rights, but do not possess the ability to assert those rights.

What did the Federal Government do?

In late 2017 the government made a number of amendments to the *Fair Work Act* ("the Act") which were intended to provide added protection to vulnerable workers. These protections included the following:

- Increased penalties or fines for "serious" breaches of workplace law

Employers who breach certain workplace laws (or persons knowingly involved in those breaches) can be fined in excess of \$50,000.00 in the case of a Corporation or in excess of \$10,000.00 in the case of an individual.

However, after the "Seven 11" scandal there was concern that these penalties were not sufficient to prevent very large organisations from systemic breaches of the law.

As a result, the Act was amended to provide for much higher maximum fines for "serious" breaches of workplace laws. A "serious" breach occurs when a person or business knowingly breaches a workplace law and the breach is part of a systemic pattern of conduct affecting more than one person.

In such cases, a corporation can be fined up to \$630,000.00 for each breach, and an individual can be fined up to \$120,000.00 for each breach.

- Increased penalties for failure to provide payslips and keep wage and time records

Employers are legally required to provide payslips, containing certain information, to staff, and to keep time and wage records for a minimum of seven years.

Unscrupulous employers have, in the past, failed to comply with these obligations, which has made it harder for workers who have been underpaid to prove their case.

The amendments to the Act provide for increased penalties for businesses that fail to keep accurate records or provide proper payslips to employees or that knowingly provide payslips that are false or misleading. In addition, the Act was amended to provide that, if an employer fails to keep time and wage records and does not have a reasonable excuse for that failure, it's up to the employer to disprove any claim of underpayment made by an employee.

Usually it's the other way around and the employee who makes the claim has the responsibility of proving that they are entitled to the payment they are seeking.

In a recent decision, a Judge of the Federal Circuit Court noted that, in such circumstances, even a generalised estimate from a worker as to their hours of work would be sufficient to establish an entitlement.

- Liability for franchisors and holding companies

In a response to the responsibility of the "Seven 11" franchisor company for the underpayment scandal, the Act was amended to provide that franchisors and holding companies will be responsible for underpayments made by franchisees or subsidiary

companies if they knew, or ought reasonably to have known of the underpayment, and failed to take reasonable steps to prevent it.

In addition, officers of the franchisor or holding company (directors and senior management for example) can be held liable as an accessory to a breach of workplace laws committed by the franchisee or subsidiary.

Furthermore, in a direct response to the “Seven 11 cash back scheme”, the amendments explicitly prohibit employers from requiring their workers to pay them money.

- Increased powers to the Fair Work Ombudsman.

The Office of the Fair Work Ombudsman has responsibility for ensuring that employers comply with workplace laws. It has certain investigative powers and can compel employers to provide information and records/documents.

The amendments strengthen these powers and provide the Fair Work Ombudsman with new ways of pursuing employers and businesses that attempt to obstruct its investigations by providing false or misleading information.

Will changes to the Fair Work Act make a difference for vulnerable workers?

These changes and in particular, the increased penalties, will hopefully assist to ensure better protection of vulnerable workers in the future.

NOTE, the Office of the Fair Work Ombudsman has recently released a smart phone app called [“Record my hours”](#) which is designed to assist workers to keep records of the hours they have worked, in order to verify that their pay slips are correct or, if no payslips are provided, to ensure they have a record of their hours.

We encourage all workers to use this app to keep a record of hours of work so that, if they are underpaid, they will be able to prove their hours of work.

If you are, or know of, a worker who has been exploited or ripped off by their employer, please [contact Andersons Solicitors workplace team](#) for advice.

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