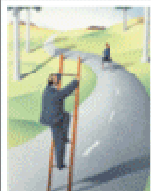




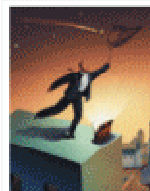
Compliance &  
Audit Support



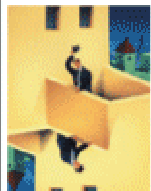
Education &  
Training



Legal Services



PI Loss Control



HR Services



Lloyd's Services

## HR NEWSLETTER:

### The \$ Benefits of Effective HR Management

Welcome to the April edition of the Gold Seal Newsletter.

Australian businesses have just passed the three month marker following the introduction of the new IR laws. Many have made substantial progress in the implementation of updated employment agreements, employee policies and documentation to help them comply with the laws.

Some businesses, however, have taken a less prudent approach - "doing what they can" and "hoping to get to the rest of it in due course". Taking this approach is risky.

As mentioned in last month's newsletter article, Fair Work Ombudsman (FWO) Inspectors will make 50,000 visits to small businesses over the next 3 years with 10,000 visits planned for this year in NSW alone. The visits are for the purposes of monitoring the progress of businesses and their transition to the new Industrial Relations system.

If a complaint is made by an employee and investigated by the FWO, or if the business is chosen as one of the random visits the FWO is conducting, the consequences may be severe.

This article highlights some recent examples of non-compliant businesses that were ordered to pay compensation and/or fines. It also provides some suggestions for you to save yourself the costs involved with non-compliance.

#### Incorrect Record Keeping

An ex-employee of an insurance brokerage lodged a complaint with the Fair Work Ombudsman regarding his entitlements. As the business failed to keep accurate records of the employee's annual leave entitlement (both accrued and taken), upon termination the parties agreed to a payout of a fixed amount. However the employer was unable to provide satisfactory documentation that this agreement was made and the complainant argued that the payment was not for accrued annual leave but rather a monthly salary. Due to the lack of satisfactory documentation the employer was required to pay an additional amount for annual leave. The business was ordered to pay the money within 28 days or face fines and/or prosecution.

#### Notice of Termination

After an employee was terminated she lodged a complaint with the FWO that the insurance business she worked for had not paid her the correct entitlements. The employer was selling the business. The sale was discussed with the complainant employee some weeks prior to her termination (but only confirmed the settlement date with the new business and thus the termination of her employment with the current business) 2 weeks prior to the sale. Due to the age of the employee she was entitled to 3 weeks notice of termination. As part of the investigation of other matters, the FWO determined that the employee did not receive adequate notice or payment in lieu of notice and the employer was required to pay an additional weeks notice. Again, the business was ordered to repay the money within 28 days or face fines and/or prosecution.

## Underpayment of wages

1. A golf club shop was fined \$16,000 and the director fined \$34,000 for failing to back pay an employee over \$30,000. The employee was paid a flat rate and did not receive overtime, weekend and penalty rates and was underpaid in his annual leave.
2. A Queensland Insurance business was in serious breach of Workplace Laws. The business was found to have underpaid 2 employees nearly \$90,000 in entitlements including wages, annual leave and allowances. This case went to court and the employer was found guilty. The employer must repay the monies owing and now faces a penalty hearing.

## Sham contracting

A Tasmanian business was fined for underpaying several employees on their superannuation and annual leave entitlements. The business had reclassified certain employees as contractors instead of employees and dismissed individuals who did not accept the reclassification. The case is currently before the court. Penalties for each breach of the act can be up to \$33,000 for a business and \$6,600 for an individual.

## The real cost!

While these examples illustrate a cost associated in non-compliance such as back payment or fines, they do not demonstrate the cost to the business in time and resources to gather the necessary documentation, seek advice and present their case to the FWO. This situation can be time consuming, stressful and costly.

## What should you do to avoid this situation?

- Know the Basics – know the 10 minimum conditions of employment i.e. the NES and the Award conditions covering your employees.
- Check your documentation – is your record keeping up to date, accurate and compliant? Do you have policies and documents that reflect current entitlements and practices?
- Audit your business – many businesses audit the financial and operational aspects of the business but dismiss the importance of auditing their HR/IR systems
- Seek support – if you are unsure how you fare or don't have the necessary resources to make the required changes - get help now

## Further Assistance

For assistance or guidance on any HR/IR matter, contact Gold Seal on 03 9510 5100 or email [hrrservices@goldseal.com.au](mailto:hrrservices@goldseal.com.au) or [education@goldseal.com.au](mailto:education@goldseal.com.au)

If you do not have the Gold Seal Materials, Update or Assist Service, click here and complete the order form and you will have materials and access to our services within 48 hours of receipt of payment.

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