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industrial relations : human resources : employment matters : training

CIRCULAR: GEN/ 146/NAT/146/21
DATE: 18 June 2021
SUBJECT: Victoria's new wage theft act to commence on 1 July
ATTENTION: Chief Executive Officer

The Victorian government's *Wage Theft Act 2020* will commence on 1 July 2021, imposing significant penalties for employers who deliberately underpay or otherwise dishonestly withhold entitlements from employees.

A statutory body to be known as Wage Inspectorate Victoria has been established to investigate and prosecute offences, and it was announced yesterday that former Fair Work Ombudsman executive Robert Hortle has been appointed as the Inspectorate's inaugural commissioner.

The government has also committed to spending \$9.6 million to establish a 'fast-track model' in the Magistrates' Court to ensure that wage theft cases are heard quickly.

Wage theft and record keeping offences

Employers and their officers will be held criminally liable for engaging in, or authorising or permitting another person to engage in, the following 'employee entitlement offences':

- Dishonestly withholding, failing to pay or deducting from employee entitlements. Entitlements include wages, salary, allowances, meal breaks, superannuation and leave entitlements.
- Falsifying employee entitlement records to dishonestly obtain a financial advantage or to prevent the exposure of the financial advantage.
- Failing to keep an employee entitlement record to dishonestly obtain a financial advantage for the employer or to prevent its exposure.

'Dishonesty' is to be assessed according to an objective test of reasonableness, and not the individual's state of mind or honestly held beliefs. This means it will extend to both deliberately dishonest and reckless conduct.

Who can be held responsible?

Body corporates and companies will be held vicariously liable for offences of individual officers if:

- Express or implied authorisation was given by the employer or the employer's board of directors (in the case of a body corporate)
- A corporate culture existed which allowed or encouraged the employer to commit, tolerated or led to the wage entitlement offence.

Penalties

- Breaches of the employee entitlement offences will attract penalties of up to 6000 penalty units (currently \$991,320) or in the case of a person up to 10 years imprisonment.

Defences

- Due diligence is a defence to the three employee entitlement offences.
- An employer, officer or other representative may show that due diligence was exercised by taking reasonable steps to prevent the conduct from occurring.
- Failing to comply with the requirements of any regulator such as the Fair Work Ombudsman would mean that reasonable steps had not been taken.
- It is not a defence that the employee consents to the conduct if the withholding or failure to keep records reduces the entitlement below minimum rates owed to the employee.

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Web Site: www.siag.com.au **SIAG National Advisory Service** 1300 742 447

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The Wage Inspectorate Victoria

Wage Inspectorate Victoria is required to promote, monitor and enforce compliance with the Act.

The Inspectorate will appoint investigators with a wide range of powers to investigate employee entitlement offences by:

- Entering and searching premises
- Examining and seizing documents
- Requiring a person to attend their offices and produce documents, answer questions or give evidence under oath or affirmation.

Offences to which penalties apply have also been created, including:

- Hindering or obstructing an inspector
- Failure to attend or answer a question posed by the Wage Inspectorate
- Giving false or misleading information to an inspector, the Inspectorate or the Commissioner

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447. The Information provided in this email is generic advice. For advice in respect of your specific situation please contact us.



Brian Cook
Managing Director

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