AuSAC Compliance Symposium

Presented by: Vaughan Granier
Presented by

- Vaughan Granier
- BA.LLB (South Africa)
- Criminal and Labour (Employment) law
- International experience across South Africa, Middle East (Dubai), Australasia
- 30 years in HR and Employment Law
- Construction, Software, Manufacturing, Technology, Sales and Consulting
The Challenge of Compliance

(With a practical Immigration Focus)
Why Compliance?

• It drives a positive culture of ethical behaviour
• It’s a lead indicator of risk detection
• Protection against failure
• Streamline systems and processes
• Enhance predictability
• Drive down costs
• Protect against sabotage, loss of intellectual capital
What do your members need/expect from you?

• Associations provide

✓ Best Practice
✓ Statutory, Regulatory and Legal Guidance
✓ Industry leadership and lobbying/voice
✓ Standards - Technical and Quality
✓ Professional accreditation
✓ Exclusivity
✓ Events (educate / evangelise)
✓ Values / ethics / brand guarantee
✓ Efficiency of critical mass
✓ Forecasting, Research, Strategic guidance
✓ Networking and Mentorship
✓ Systems and Tools
What do your members need/expect from you?

- This will happen through focusing on the following 5 fundamentals:
  - **Information** (trends, laws, best practice)
  - **Support** (availability)
  - **Customer Service** (empathy, approachability)
  - **Convenience** (quality material, accessibility)
  - **Value** (in the eyes of the member!)
    - ✓ Exclusive content?
    - ✓ Networking?
    - ✓ Mentoring?
What do you need from them for the Association to succeed?

- Information
- Finance / Fees
- Coherence and integrity
- Teamwork
- Compliance

**BRAND:**
- Market the brand
- Personify the brand values
- Provide visibility, accessibility and critical mass to the brand in the market
- Recruitment to the brand
What is the major contributor to non-compliance?

PEOPLE
What is the major contributor/driver of compliance?

PEOPLE
People

- No clear processes
- No systems (or the system is hard work)
- No training
- Busy or Overworked
- Spread too thin
- Don’t know the why
- Measured on the wrong things.

- Trying hard
- Want to do well
- Willing
- No-one is perfect all the time
- Want to be liked.
Managers / Business Owners

- Busy or Overworked
- Spread too thin
- Don’t know the why
- Don’t know where to get information
- Measured on the wrong things
- Measuring the wrong things
- See compliance as a cost/expense
- Process Time cost
- People Time Cost
- Systems Cost
- ROI questions
HR and Employment Law

• HR is very unregulated.

• Employment Law is very regulated

• Business owners and managers often see HR and ER as one, and then get caught between the two vastly different compliance requirements.
Business challenges

• New business owners
• Operationally strong but weak in compliance
• Don’t know what they don’t know
• Don’t know where to get help!
• Focussed on bottom line, short term growth
• May lack long term strategy/focus
• Day to day challenges determine their priorities
• Unaware of industry level needs
Employment Relations

- Relates to compliance with employment laws
- Minimum wage
- Holiday pay, accruals, entitlements etc
- Parental leave
- Record Keeping
- Visa compliance
The Labour Inspectorate

- Vulnerable areas identified:
  - Migrants
  - Visa dependents
  - Youth
  - Casuals
  - Unskilled work
  - Seasonal
  - “Repeat offender” industries
Visibility and Proactivity

- Liquor retail industry
- Construction Industry
- Hospitality
- Restaurant
- Franchises
- Fast Food Chains
- Trades
The Labour Inspectorate

• Labour Inspectors make sure that workplaces meet at least the minimum standards and requirements of employment law.

• They can:
  
  o Enter any work premises at reasonable hours
  o Interview anyone
  o Inspect and copy any documents and records
Powers to enforce:

• Infringement Notices
• Penalties (ERA)
• Declaration of breach
• Banning Order
## Penalties

<table>
<thead>
<tr>
<th>Individual Penalties</th>
<th>Company Penalties</th>
<th>Stand Down Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,000 or less</td>
<td>$1,000 or less</td>
<td>6 months</td>
</tr>
<tr>
<td>greater than $1,000 but less than $10,000</td>
<td>greater than $1,000 but less than $20,000</td>
<td>12 Months</td>
</tr>
<tr>
<td>$10,000 or greater but less than $25,000</td>
<td>$20,000 or greater but less than $50,000</td>
<td>18 Months</td>
</tr>
<tr>
<td>$25,000 and above</td>
<td>$50,000 and above</td>
<td>24 Months</td>
</tr>
</tbody>
</table>
Recent Examples

Subscribe to our newsletter
Join our subscribers to receive the latest Employment New Zealand newsletter

News and updates

Christchurch restaurateurs penalised $120,000 after failure to repay workers
29 October 2019
The Employment Relations Authority has ordered the Noori family and their business, Indian Heaven Ltd, to pay $118,799 in penalties for employment law breaches.

$450,000 for “inexplicable and heinous” treatment of Hamilton liquor store employees
23 October 2019
Husband and wife, Paramjeet Singh Parihar and Kuldeep Kaur Parihar, who owned two Super Liquor stores in Hamilton have been penalised by the Employment Court.
Recent Examples

An Otago business and its director must pay $82,500 for record-keeping breaches involving nearly 20 young workers, following a determination by the Employment Relations Authority (ERA).

New Zealand Mountain Hunting Ltd, that operates a hunting lodge outside of Omarama, has been fined $55,000 and director Gary Herbert has been ordered to personally pay a further $27,500 as the person involved in the breaches.

The Labour Inspectorate investigated the business after a former employee alleged the employer required staff to work an average of 12 hours a day, but only paid a flat rate of $150 per day of work.

The investigation showed the employer did not keep full and accurate wage and time records for 17 employees and did not keep full and accurate holiday and leave records for 19 employees. Their individual employment agreements also did not state the employees' usual hours of work.
Recent Examples

Husband and wife, Paramjeet Singh Parihar and Kuldip Kaur Parihar, who owned two Super Liquor stores in Hamilton have been penalised by the Employment Court.

They have been ordered to pay a record $200,000 in penalties for serious employment law breaches. This is in addition to $250,470 they already repaid to six former employees for minimum wage and holiday pay arrears.

The six employees worked at Super Liquor Flagstaff and Super Liquor Hillcrest between 2010 and 2017. They were paid between $8 and $11 an hour, which was well below the minimum wage in any given year. One employee alone was compensated $106,076 for seven years of underpayments.

Some of them worked more than 60-70 hours per week – including on public holidays. They had not been provided with any sick leave, holiday pay or public holiday entitlements. Where they took time off, they were either not paid or required to return the money to their employer or make up the time they were away by working for free.

The employers also failed to keep accurate employment records which the Court saw as an attempt to cover up their abuse.
Recent Examples

The Ministry of Business, Innovation and Employment (MBIE) has set up a debt collection unit targeting employers and individuals who have ignored orders to compensate workers.

These orders are from the Employment Relations Authority (ERA), or the Employment Court, and are imposed on employers who have breached employment laws, or exploited their workers.

The debt collection unit follows up on debt when the debt is owed to MBIE or its trust account. If the employer is ordered to pay the debt directly to the employee, the Labour Inspectorate would not get involved.

Stu Lumsden, Labour Inspectorate national manager, says that a legislation change in 2016 means that employers, including directors and managers, can now be held personally liable for penalties.

"Even if employers decide to wind up the company, we can still chase the individuals in respect of the recovery of the debt. We have done so on a number of occasions and recovered tens of thousands of dollars."

This is particularly important owing to a number of so-called "phoenix companies" – those that are liquidated by their owners after being penalised by the ERA, or the Employment Court. The companies are then set up under a new name to avoid paying workers any penalties following a complaint. Owners of these companies will not be able to avoid their liability from breaking employment laws.
Changes to Immigration Compliance

• Directors personal liability for non compliance
  o Backpay
  o Compensation awards
  o Damages
  o Fines

• Includes passive directors, silent partners
Changes to Immigration Compliance

• There have been recent media articles:
  
  
  
  • [https://www.stuff.co.nz/opinion/115968639/a-more-workable-work-visa-system](https://www.stuff.co.nz/opinion/115968639/a-more-workable-work-visa-system)
Changes to Immigration Compliance

• The Labour Inspectorate wants industry to know the way forward. Their goal is compliance, not catching non-compliance and issuing penalties (not “traffic cops”)

• They are ramping up compliance initiatives, inspections and monitoring
Changes to Immigration Compliance

- Single temporary work visa replacing 6 categories
- 3 stage process
  1. Employer check
  2. Job check
  3. Worker check
- Pay level creates category (no longer apply ANZSCO categories)
- Stronger labour market test (lower paid roles)
- More open access for higher paid roles
- Reinstated ability to bring family (lower paid roles)
What is the “employer check”?

- **Compulsory** accreditation in advance
- No employer accreditation, no visa
- Demonstrated compliance across all employment laws
  - Recordkeeping
  - Payroll and minimum pay
  - Holiday pay
  - Working hours
  - Visas and condition compliance
Compliance Requirements

- Minimum Pay and working hours
- Holiday and public holiday pay rates, records
- Rosters and working hours
- Payslips and payroll record keeping
- Employment contracts
- Breaks, rest periods, overtime
- Visa compliance
- Board and Lodging, transport
- No kickbacks, under the table arrangements
Thank you

AuSAR Compliance Symposium