

ALERT

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Personal liability for sham contracting arrangements

In the first case prosecution brought by the Fair Work Ombudsman (**FWO**) for a sham contracting arrangement, the Federal Magistrates Court has fined both the owner of the business and its human resources (**HR**) manager. While the facts of the case were at the extreme level, in that the employer had terminated the employment of all of the employees and then re-engaged them as independent contractors, it shows the standard that is expected of HR managers by both the FWO and the court. While the fine that was imposed upon the HR manager was significantly lower than that imposed on the owner of the business, the court ruled that the HR manager was 'centrally involved'; as HR Manager it was his responsibility to ensure that the business complied with industrial and employment related legislation.

This case highlights the importance of:

- effective HR management; and
- the need to provide definitive advice to the business about the impact of any decision to ignore workplace laws.

This case is the latest in a series of decisions imposing personal liability on directors and managers who have fallen below the standard required under the Fair Work Act. The clear message for employers and HR Managers is to make sure you are informed about your obligations and take all necessary steps to ensure compliance with the legislation.

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