

# Accountancy firm 'involved' in client's underpayments in landmark decision



Accountants may be forced to "join the dots" if they suspect their clients are underpaying staff or risk legal action. [Getty Images](#)

by [David Marin-Guzman](#)

In a precedent-setting decision, the Federal Circuit Court has held an accountancy firm was liable for an employer's underpayments because it failed to make inquiries into whether minimum conditions were being met.

Legal experts have called the ruling a "game changer" and say payroll managers and advisers now risk fines even they do not have direct knowledge that their actions constitute a breach.

Judge John O'Sullivan found Victorian firm Ezy Accounting 123 Pty Ltd "deliberately shut its eyes" to workplace breaches when it provided payroll and bookkeeping services to its client, Blue Impression, which runs Japanese fast-food outlet Hanaichi in Melbourne.

The Fair Work Ombudsman had accused Blue Impression of paying a Taiwanese backpacker as low as \$16.50 an hour, without penalty rates, loadings or allowances, and also alleged that Ezy was "involved" in the underpayments.

Ezy, run by certified practicing accountant Eric Lau and his wife Lina Hii, claimed it was merely a service provider and had no knowledge of the specific employee's duties, what award applied or whether he worked hours subject to penalty rates.

The bookkeeper specifically in charge of Blue Impression said her role was limited to "data entry" and she "did not think twice" about the hourly rates provided by the fast-food outlet.

Where Australia  
does business in  
commercial property

Find out more



**Commercial Real Estate**

Advertisement

**CBRE**

Contact Agent



For Lease

"It was not my business to know whether or not the rates complied with any award. That was a matter for the employer."

## 'Red flag after red flag'

But the FWO said Ezy was well aware of the correct award rates as it had helped Blue Impression rectify underpayments uncovered in a previous audit in 2014.

Mr Lau claimed after learning the "distasteful fact" that Blue Impression had underpaid some of its employees he refrained from making further inquiries as he "did not wish to know any more about it".

He said award obligations were outside his professional expertise and the scope of work he was retained to do.

However, the ombudsman argued Ezy engaged in "wilful blindness" because it failed to upload the correct rates in the payroll system despite "red flag after red flag".

Judge O'Sullivan found the firm's witnesses "left a lot to be desired" and their denials were "risible".

"Overall the evidence of the witnesses for Ezy left the clear impression of designed or calculated ignorance as to those matters."

"However, this ignorance was never adequately explained given the frequency with which on the evidence (certainly Mr Lau and Ms Hii) dealt with [workplace advisory firm] Employsure for [Blue Impression] and the advice and information about those matters they received as a result."

He made declarations against Ezy after finding it was possible to infer actual knowledge on the part of Mr Lau "from a combination of suspicious circumstances and a failure to make inquiries".

Ezy now faces penalties of up to \$51,000 per breach for seven breaches of the Fair Work Act.

## 'Join the dots'

The ruling is part of the workplace watchdog's broader crackdown on third party accessories, including human resource professionals, [payroll managers](#) and advisers.

FWO Natalie James has previously questioned why "trusted advisers" should not be held accountable when they give incorrect or bad advice or deliberately assist with a contravention.

"In situations where we believe accountants or other professionals knowingly facilitate contraventions of workplace laws, we are prepared to hold them to account."

K&L Gates workplace law partner Gerard Phillips said the case would force accountants to start scrutinising the numbers they received rather than just automating calculations.

"This should send a chill for every pay office in the country – that the people actually administering the pay are liable as well," he said.

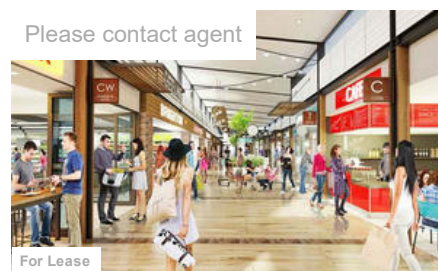
"If you are performing that function you better have a complete and detailed knowledge of the industrial arrangements and that they are being complied with."

**Level 41/525 Collins Street MELBO...**

Offices 500m<sup>2</sup>



Please contact agent



For Lease

**521-531 Brighton Road BRIGHTON...**

Retail 4,694m<sup>2</sup>

### Executive Jobs in Australia

[Executive Director Impact Investing](#)  
Social Ventures Australia  
Flexible Location

[CEO](#)  
MOVE  
Brisbane

[General Managers](#)  
People for Purpose  
Sydney, Sydney Region

[Chief Executive Officer](#)  
Mt Buller  
Mount Buller

powered by

## Related articles

### Mid-tier and big four staff on the move

1 hr ago

### Landry accuses husband of avoiding taxes, being stingy

1 hr ago

### N. Korea a priority in Trump-Turnbull talks

1 hr ago

### Robots to take over tax compliance

### Business owners spell out budget wish list

## Latest Stories

**Woolworths' BIG W to lose \$160m**

"You might not have known it was a breach but it's up to you to join the dots."



9 mins ago



**Bingo wants to stop trucking waste to QLD**

10 mins ago



**Melbourne CBD to get 60-storey frat house**

23 mins ago

[More](#)

## Recommended



**Airbus lost somewhere between Australia and Austria**



**Freehills lawyers banned from making pamphlets. How will...**



**CPA Australia Board regrets having to comply with the law**

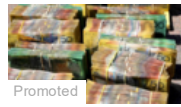


**Celebrity accountant Anthony Bell suffers early setback in...**



**Herbert Smith Freehills settles with White & Case**

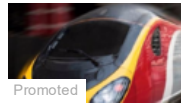
## From Around the Web



Promoted

**New Income Protection Comparison Site Launches**

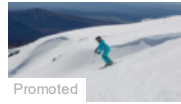
Life Insurance Comparison



Promoted

**Are You Taking Advantage of Infrastructure in Your SMSF?**

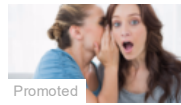
AMM Capital



Promoted

**Epic slopes lead to stunning backdrops on Mt Ruapehu**

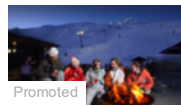
Tourism New Zealand



Promoted

**Mortgage Broker Secrets - 4 Things They Will Never Tell...**

Mozo



Promoted

**Where epic slopes lead to stunning backdrops**

Tourism New Zealand

powered by plista

## Special Reports

Australia's 50 biggest private philanthropists

Giving back to society

Meet the 2017 Bulgari Art Award winner

The family battle behind the sale of the Kidman empire

Why a \$350 wine needs a backstory

This CEO's first job led to her dream career

Where the business crowd meets in Hanoi

How big companies keep their top performers

Dame of Drones' advice for emerging leaders

The Wolf of Wall St

Luminous in Manhattan: Concrete master's tour de force

Surfing restaurateur on getting the full Bondi rescue

The best new (and fun) luxury gifts

David Umemoto's meditations in concrete

Travel tip: forget travelling light

Germany confirms cyber attacks on political party think tanks

Macron victim of cyber hit similar to Democratic Party

Estonia: 10 years after its cyber attacks

ASX boards receive cyber complacency warning

PRRT changes kicked down the road

SUBSCRIBE

LOGIN

### MARKETS DATA

- Markets Overview
- World Equities
- Commodities
- Currencies
- Derivatives
- Interest Rates
- Share Tables

### SUBSCRIPTION TERMS

- Digital Subscription Terms
- Newspaper Subscription Terms
- Corporate Subscriptions

### BRANDS

- The Australian Financial Review Magazine
- BOSS
- BRW Lists
- Chanticleer
- Luxury
- Rear Window
- The Sophisticated Traveller

### CONTACT & FEEDBACK

- About us
- Our Events
- FAQ
- Contact us
- Letters to the Editor
- Give feedback
- Advertise
- Site Map

### CONNECT WITH US

- Facebook
- Twitter
- LinkedIn
- Instagram

### FAIF

- The
- The
- Adz
- Dorr
- Driv
- RSV
- Ess
- Horr
- Wea
- One
- The