WHY IT'S CRUCIAL FOR FRANCHISEES TO BE PROACTIVE WHEN IT COMES TO PAYROLL

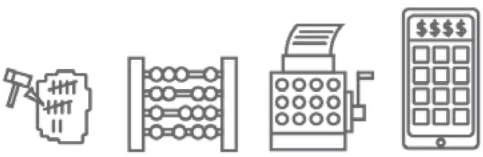
Franchisees usually get a lot of help from franchisors when it comes to marketing, branding, and daily operations. One area where some franchisees seem to be left out in the cold is in managing payroll.

This could be partly due to the complexities around payroll; changing and complex requirements can make it difficult for franchisors to keep pace with requirements and communicate them clearly to franchisees.

It's therefore important for franchisees to take responsibility for managing payroll proactively. This will reduce the risk of accidental errors that can damage the brand and the business. Even honest errors can turn into branding disasters if not handled correctly and promptly.

Recent changes to workplace laws are aimed at protecting franchise workers. They were drafted in the wake of recent, high-profile misconduct by different franchises, although they apply to all businesses. These laws also hold franchisors to account if franchisees and subsidiaries don't meet their obligations around remuneration, pay slips, awards, payment schedules, and more.

> As a franchisee, it's essential to be aware of obligations around payroll to avoid falling foul of the Fair Work Ombudsman, and potentially having to backpay wages and fines.



Some of the requirements that franchisees and other small businesses need to be aware of include:

1. PAYING WAGES

Staff must be paid according to their award or enterprise agreement, which sets out whether they need to be paid weekly, fortnightly, or monthly. In the absence of specific information, employees must be paid at least monthly. Employees must be paid with money, not with goods or services provided 'in-kind'.

2. DEDUCTIONS

Employers can take money from an employee's pay in some limited circumstances such as if the employee agrees in writing and it's for their benefit, or it's allowed by a court order or under the employee's award. Employees can't be forced to agree to a deduction and any deductions must be shown in writing on the employee's payslip and wage records. Employers must not deduct money for things like till shortages or breakages, as this is illegal.

3. UPFRONT PAYMENTS

Some employers ask potential employees to make an upfront payment to secure their employment. This most often happens when an employee is asking for visa sponsorship. Such payments aren't lawful, and franchisees cannot ask potential employees to make any upfront payments to secure a job offer or keep their job.

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4. SPENDING REQUIREMENTS

Employers can't dictate how employees spend their money, regardless of whether that money is from wages or another source. Some employers demand that employees spend money in their shop or their associates' businesses; this is not allowed.

5. CASHBACK SCHEMES

Some employers pay workers their full entitlements on paper but demand that the employee give back some of their pay in cash, effectively lowering their income. This is unreasonable and not allowed. Employers must pay employees according to their agreement employment terms.

6. SHAM CONTRACTING

Some employers require workers to act as independent contractors, which lowers the cost of employment for the business but places undue risk on the worker. If a worker isn't genuinely working as a contractor, and instead fits the definition of an employee, then the business must treat them as an employee and pay them accordingly.

7. KEEPING RECORDS

Franchisees should keep accurate and transparent records regarding time and wages for seven years. These records must be in English, legible, and readily accessible for audit purposes. Failing to keep adequate records can result in fines. It's essential to keep good records to prove that employees haven't been underpaid or subject to any unlawful schemes.

8. PAYSLIPS

Payslips form part of the record-keeping requirements and must be given to employees within a day of their payday. Payslips must include full details of each pay period. Businesses that don't comply with payslip requirements can also be fined.

If a franchisee makes an honest mistake, it's unlikely to be a problem as long as the mistake is reported as soon as it's discovered, and the franchisee takes all reasonable steps to rectify the error. This includes paying backpay promptly.

PAYROLL TAX

Another area that can cause issues for franchisees is that of payroll tax. Different in each state, payroll tax is complex and many-layered. A franchisee's obligation is based on many factors such as the amount of remuneration paid, whether the franchised business is part of a group, and whether the business shares employees with other businesses.

Employers only have to pay payroll tax if the total amount of remuneration it pays is above a certain threshold. Each state's threshold is different. For example, in New South Wales, the annual threshold is $850,000, while the Queensland threshold is $1.1 million. In Victoria, the annual threshold is much lower at $650,000. However, the thresholds are measured against the Australian wide payroll.

For many franchisees, these thresholds may be sufficiently high to mean they don't have to pay payroll tax. However, if the franchisee's business is considered part of a group for payroll tax purposes, this could change. When groups are assessed, the threshold is only available to one business in that group, so all other businesses in the group must pay payroll tax regardless of their total payroll bill.

A group exists where there's a corporation and related corporate bodies, where there are common employees used in the businesses, or where the same person (or entity) has a controlling interest in at least two of the businesses whether they're a silent partner or an active partner.

To determine whether they're part of a group, franchisees must consider how independent they are in carrying on their own business, or if they're interrelated with other businesses. Recent caselaw in Victoria noted that, in major chains that operate under a business franchise model such as McDonald's and KFC, each franchise is considered a separate business for payroll tax purposes. Even though these businesses run under a formula, set criteria, and common branding, they are still considered totally independent of each other for taxation purposes.

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Getting away with error-ridden or fraudulent payroll management will no longer be quite so easy with the introduction of the Australian Taxation Office's (ATO) Single Touch Payroll (STP) requirements. These requirements will make it easier for the ATO to collect information about payments and match that information to tax returns. This will illuminate anomalies or other indicators that employers aren't doing the right thing. Similarly, it will make it easier to detect when employees aren't reporting their income in line with their employer's records.

Although the requirements currently only apply to businesses with more than 20 employees, in mid-2019 the requirements will expand to include all businesses that pay salaries or wages. This means the ATO won't only catch out large businesses that are underpaying employees. Instead, the ATO will be able to identify and prosecute any business owner that fails to live up to their payroll obligations.

STP requires franchisees and other business owners to report payroll payments every time they pay their employees. This will force many business owners to rethink and modernise their payroll practices. Using a spreadsheet or other manual tool to manage payroll will no longer be tenable; business owners will need to invest in compliant software that lets them meet STP requirements.

In these early stages, the ATO understands the additional cost burden STP compliance places on businesses. While businesses will need to invest in the right accounting systems, the ATO is looking to reduce the overt involvement in compliance from businesses. Ideally, businesses will be able to set up their payroll management system to integrate directly with the ATO so that information is automatically provided to the ATO each time the payroll is run.

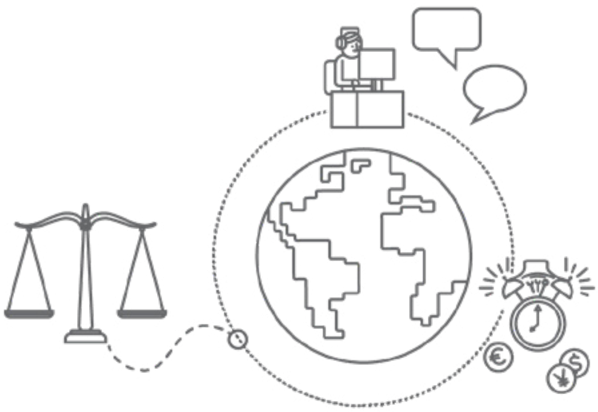
Given all organisations will be subject to this requirement sooner or later, it makes sense for franchisees to start considering options now and, potentially, earmarking funds to pay for upgrades or technical support to achieve full compliance.

There are other benefits to implementing a modern system to manage payroll. For example, doing so can make it easier to manage the myriad of awards and conditions that apply to individual employees. It can be easy to inadvertently fail to comply with these requirements when trying to manage payroll manually. Therefore, updating the details of awards and enterprise bargaining agreements (EBAs) within a more sophisticated payroll system means these conditions will be automatically applied to workers' wages and entitlements in each pay run. It's important to continually update this information, however, to avoid mistakenly using outdated information.

> By choosing the right solution that complies with the government's STP requirements, franchisees can remove that burden from their own shoulders.

Another key step that franchisees should take is to seek professional advice to help them keep up to date with evolving tax rules or changing awards. This can dramatically reduce the risk of accidental over- or underpayments to employees or getting tax and superannuation payments wrong.

When choosing a system, franchisees should opt for a cloud-based software. These are backed up on multiple servers in real time so that, even if the business experiences a major disaster, they're unlikely to lose important data that could affect their ability to comply and report to the ATO.



Cloud-based systems have the additional advantage of being easy to use by non-accountants. This makes it easier for franchisees to take control of finances and understand their position, as well as get payroll correct.

> While franchisees will need to invest upfront in new systems and setting them up correctly, this investment will pay off in the future, as franchisees can save time on payroll management and reduce costly errors.

Where possible, it's worth considering automating some of the payroll process. This can be done by integrating bank feeds, using optical character recognition (OCR) to avoid having to manually type in information, and implementing HR and payroll modules as part of accounting software.

Doing this helps franchisees mitigate or even eliminate many of the risks they could face around payroll, including ensuring all employees are paid correctly on time, every time, and meeting all tax obligations without fail. Paying the right amount of superannuation and tax, and managing employee leave entitlements effectively, means franchisees can worry less about payroll and concentrate on building and growing the business.

An added bonus of a system like this is that it will assist in recognising errors when they happen. This means franchisees can act immediately to rectify the situation, whether it's to correct underpayments, meet tax requirements, or adjust leave entitlements.

It also helps avoid overpayments, which can be awkward for franchisees to manage. Employees can't necessarily be forced to return overpayments immediately. This means that the company would potentially be out of pocket for some time if it overpaid an employee. Overpayments can be one-off errors that happen during a pay run or they can occur as a result of inaccurate award or agreement details being used to calculate pay. Using a system that minimises this risk is an important way to save money and avoid having to negotiate repayments with an overpaid employee, who could become resentful.

It's also worth reiterating the value of seeking independent, professional advice from a payroll and taxation expert. They can help franchisees choose and implement the right system, stay aware of all relevant legislation, and get the best performance from their business while managing risk.

This article was written by Jane Wood for the Business Franchise Guide for 2019.

FOR FURTHER INFORMATION

If you require further information, please contact your local RSM office.

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