

Bosses exploiting workers would face harsher penalties under Labor: Shorten

Written by The Conversation USA

A Labor government would crack down on employers who exploit workers, with the introduction of harsher penalties and other measures, Opposition Leader Bill Shorten has promised.

The announcement comes as the government will on Tuesday reintroduce the legislation, previously rejected by the Senate, to bring back the Australian Building and Construction Commission (ABCC) as the industrial watchdog on the construction industry. The government wants to ramp up workplace relations issues in the wake of damaging findings by the trade union royal commission. It is giving Senate crossbenchers access to the secret part of the commission report to try to win their support for the ABCC legislation.

The measures Shorten is promising include higher penalties for employers who deliberately underpay workers, and stronger protections for workers from “sham contracting”. The Fair Work Ombudsman would be given more power to pursue employers who liquidate their companies to avoid paying money owed to workers. There would also be reforms to stop temporary overseas workers being exploited.

The opposition is backing up its case for action by highlighting several recent examples. These include Myer sub-contractors employing cleaners on “sham” contracts; exploitation in 7-Eleven stores; Pizza Hut delivery drivers being paid as little as \$6 an hour in “sham” contracting arrangements, and exploitation of workers in Baiada Group food processing factories.

“These high profile examples are just the tip of the iceberg. In 2014-15 the Fair Work Ombudsman recovered \$22.3 million in back pay for over 11,000 workers,” Shorten and Shadow Minister for Workplace Relations Brendan O'Connor said in a statement.

At present an employer who does not properly pay workers is liable for a civil penalty of up to \$10,800 per breach (for a person) or \$54,000 (for a corporation).

While Labor will consult employers, workers and unions about what the new level should be, it suggests penalties could be three times the underpayment, or \$216,000 for an individual and \$1,080,000 for a body corporate, whichever was the higher.

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Labor is seeking views on whether a new criminal offence should be introduced “where an employer intentionally or recklessly seriously rips off workers”.

It also proposes courts have the power to disqualify directors in conjunction with the higher penalties.

“Sham” contracting is where an employer seeks to disguise an employment relationship as an independent contracting one to avoid having to pay workers proper entitlements. Labor would change the test for whether a person is an employee, increase penalties for sham contracting, explore having a new criminal offence, and allow courts to disqualify directors.

New enforcement powers would be brought in against “phoenixing” by making directors personally liable for debts in relation to outstanding compensation owing to workers or civil penalties owing for breaches of the Fair Work Act.

“Phoenixing” is where an indebted company transfers assets to a new company to avoid paying creditors, tax or employee entitlements.

Labor in 2012 changed the superannuation law to allow the Tax Office to hold directors personally liable for unpaid super guarantee payments where “phoenixing” had been used to attempt to avoid these obligations. The proposed policy would build on that move.

A Shorten government would bring in a new criminal offence for employers who deliberately exploited temporary overseas workers, failing to meet their obligations to them under the Fair Work Act.

Postscript

In some good news for the government on the economic front the latest Australian Industry Group survey shows CEOs are more optimistic about general business conditions this year than at any time in the past three years. Of the 250 businesses surveyed 63% expect their annual sales to improve in 2016 while just 16% expect a decrease.

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In the survey, 8% of CEOs ranked the flexibility of industrial relations as one of the three leading impediments to their business growth in 2016.

Australian Industry Group chief executive Innes Willox said among the reasons for the improved outlook were further drops on the \$A, low interest rates and inflation, a more strongly improving labour market, a resurgent residential construction sector, improving consumer confidence and local spending and the positive response to the change in Australia's political leadership.

But there were risks for 2016 including the volatility of financial markets, recent commodity price trends, and the fragility of the global economy. There would also be the "uncertainties of a federal election," he said.

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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