

Can't Hide Behind a Corporation: Employer to be Jailed for Contravention of Employment Standards

Yuk Yee Ellen Pun, the owner of a chain of restaurants north of Toronto, has been sentenced to jail time under Section 137 of the *Employment Standards Act, 2000* (“ESA”) for authorizing, permitting and/or acquiescing a contravention of the ESA. The charge relates to her corporations’ failures to provide employees their entitlements under the ESA and the subsequent failure to comply with the Ministry of Labour’s order to pay owed wages and other mandatory compensation.

Ms. Pun was the director for 12 corporations in the food service industry under the Regal chain. The chain’s employees were food service providers, cleaning staff and administrative personnel. Between June 2013 and April 2014, 68 different complaints were made by employees of the various corporations when they shut down in 2013. The complaints alleged unpaid wages from salaries, overtime, vacation, statutory holidays, termination and severance. The amounts owed were as low as a couple hundred dollars and as high as \$45,000.00; in total, over \$676,000.00 was owed to the employees.

Following a year-long investigation by the Ministry of Labour, the corporations were ordered to pay \$457,443.00 to the employees in June 2015. Only \$104,800 of these outstanding amounts was paid, leading to this case.

The corporations and Ms. Pun pled guilty to non-compliance with the order. An Ontario Court Justice of the Peace fined each of the 12 corporations \$75,000.00 for a total of \$900,000.00 and sentenced Ms. Pun to a custodial sentence of 90 days. The Justice of the Peace also ordered a 25% surcharge on the fine to be directed into a provincial government fund that assists victims of crimes.

Section 137 of the ESA provides for an officer, director or agent of a corporation to be held liable for authorizing or permitting a contravention of the ESA. Under this Section, Directors can be held liable and convicted to a fine or imprisonment.

The punishment shows the seriousness of the breach and sends a strong message to employers about their obligation to meet the requirements of



applicable employment standards and the importance of complying with orders issued by employment standards officers. It also underscores the concept of director liability; employers should be aware that they are not insulated by incorporation and may still be held personally liable for permitting a contravention of the ESA.

If you have any questions regarding employment standards or director liability, please contact e2r® to speak with an Advisor.

