



Australian Government

Fair Work OMBUDSMAN

NSW - HUNTER REGION TOURIST AND SERVICE COACH DRIVERS CAMPAIGN.

Final Report August 2010

Summary

The Hunter Regional Office of the Fair Work Ombudsman (FWO) commenced an educational and compliance targeted campaign in the tourist and service coach industry in and around the Newcastle area on 3 December 2009

This campaign was initiated following an investigation into a complaint against a large shuttle bus company, which revealed significant non-compliance with commonwealth workplace laws. The complainant involved had worked for other comparable companies in the Hunter area and had encountered similar problems whilst employed by such companies.

Following the issue of a media release explaining our intention to target businesses which employ shuttle bus drivers in the Newcastle region, we identified 10 businesses as likely to employ tourist and service coach drivers in the Newcastle region.

Five audits were undertaken uncovering issues relating to record keeping, underpayment and contracting.

We have recovered \$17,658.00 for 43 employees.

Although our Inspectors found that employers appeared to be doing their best to comply with Commonwealth workplace laws, it became apparent that the need for further educational activities would be highly desirable to assist businesses in doing so.

Background

During an investigation undertaken by the Hunter Regional Office into an employer in the bus industry intelligence was provided that indicated other operators were engaging staff as independent contractors, thereby depriving staff of their legitimate entitlements.

In order to be pro-active, we decided to commence a targeted education and compliance campaign relating to the employment of tourist and service coach drivers in and around the Newcastle area.

Campaign aim and objectives

Therefore the primary aim of this campaign was to provide educational material and advice to employers, and to ensure compliance with Commonwealth workplace laws.

Specifically the objectives were to:

1. Ensure compliance with the requirements of the *Fair Work Act 2009* (the Act) and *Fair Work Regulations 2009* (the Regulations) in regards to the keeping of time and wage records and issuing of pay slips.
2. Provide information across the industry to assist employers to meet their obligations under federal legislation and to promote the role of the FWO.
3. Ensure that employers comply with their minimum wage and entitlements obligations, including that the wage increase effective from the pay period commencing on or after 1 October 2008 has been passed on to employees.

Methodology

The methodology included the following stages:

- We alerted employers about the campaign with a media release.
- We visited 10 selected businesses to undertake audits in the field.

Results

As at 30 July 2010, when the results of this campaign were compiled, we found the following results:

- We initially targeted 10 employers. Five were unable to be audited due to the following reasons:
 - Not federal jurisdiction – 2
 - No Employees – 1
 - No longer trading – 1
 - Referred to state jurisdiction - 1
- Of the five audits undertaken, four have been finalised.
 - Two employers (50%) were in contravention
 - Two employers (50%) were compliant
- One company remains under investigation due to possible issues relating to sham contracting.

Status of Audits	
Targeted	10
Unable to audit	5
Audits finalised	4
• <i>Employers in contravention</i>	<i>2 (50%)</i>
• <i>Employers compliant</i>	<i>2 (50%)</i>
Audits under investigation	1

Of the two employers in contravention:

- One company was found to have contravened time and wage record keeping and pay slip records. These issues have since been rectified.
- One company operated under a collective agreement which was never lodged, and was therefore invalid. As a result we have recovered \$17,658.00 on behalf of 43 employees who were under paid.

The employer found to be a partnership was referred to the state jurisdiction to investigate the possibility of underpayment and record keeping issues.

Another employer was identified as having possible issues with excessive accrual of time in lieu. The issue was discussed with the employer, but not pursued as a contravention, as it does not contravene the applicable modern award.

Other findings

Our Fair Work Inspectors noted that where contraventions were identified, they applied not only to those identified as tourist and service coach drivers, but to all employees in the identified businesses.

We found that some employers are still confused in relation to which industrial instrument applies to their workplace and whether they are covered by the federal or state jurisdiction.

A number of employers in the industry were initially identified as sole traders or partnerships. This information was forwarded to the NSW Office of Industrial Relations for follow up action.

Conclusions

As a result of this campaign significant education has been provided to employers as regards their rights and responsibilities under Commonwealth workplace legislation. The additional benefit of the campaign has been the increased awareness of the role of FWO amongst employers, and how we can assist them to better comply with their workplace obligations under the law.

As the compliance rate on this occasion was less than would have been hoped for, it would be desirable for Fair Work Inspectors to undertake further educational and compliance activities for such businesses in the future.

© Commonwealth of Australia 2010

The material contained on this website constitutes Commonwealth copyright and is intended for your general use and information. You may download, display, print and reproduce this material in unaltered form only (retaining this notice and any headers and footers) for your personal, non-commercial use or use within your organisation. You may distribute any copies of downloaded material in unaltered, complete form only (retaining this notice and any headers and footers). All other rights are reserved. Requests and enquiries concerning reproduction and rights should be addressed to Commonwealth Copyright Administration, Attorney General's Department, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>

