



Fair Work
OMBUDSMAN

SA Private hospitals, aged care centres and nursing hire agencies audit program

Report – November 2013

Contents

Contents

| | |
|--|----------|
| Summary | 4 |
| Purpose of the campaign | 4 |
| Our industry partners | 4 |
| Why did we conduct the audit program? | 4 |
| What did we do? | 5 |
| What did we find? | 5 |
| Underpayments | 6 |
| Other findings | 6 |
| Concluding remarks | 6 |
| About the Fair Work Ombudsman | 6 |

Campaign snapshot

More than

175

audits were conducted

Total of

89%

of employers were compliant

Over

\$109k

was recovered on behalf of
563 employees

Summary

The Fair Work Ombudsman conducted a Private hospitals, aged care centres and nursing hire agencies audit program. The aim of the program was to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and applicable industrial instruments.

During the program, we assessed the records of 178 employers to ensure their compliance with the following requirements:

- hourly rates of pay
- penalty rates and allowances
- record keeping and pay slip obligations.

Of the 178 audits undertaken, we found 158 (89%) employers to be compliant and 20 (11%) employers had a contravention.

We recovered a total of \$109,962 for 563 employees.

Purpose of the campaign

The aim of the Private hospitals, aged care centres and nursing hire agencies audit program (the program) was to ensure employees in regional and metropolitan South Australia were receiving the entitlements prescribed by the following applicable awards:

- *Health Professionals and Support Services Award 2010*
- *Aged Care Award 2010*

The specific objectives were to:

- assess compliance with correct wage rates
- assess compliance with correct time and wage record keeping and pay slip practices
- provide employers with information about the many resources provided by FWO, including our online tools.

Our industry partners

Before starting the program, we contacted the following industry stakeholders:

- Australian Medical Association (AMA)
- Australian Nursing and Midwifery Federation (SA Branch)
- Aged Care Association of Australia
- SA Unions
- Business SA
- Australian Private Hospitals Association
- United Voice (SA Branch).

We met with the stakeholders to explain the purpose of the program and the activities that would be involved.

We invited stakeholders to provide feedback on the campaign and to assist in promoting it amongst their networks.

Why did we conduct the audit program?

In early 2011, the Fair Work Ombudsman (FWO) in conjunction with the AMA commenced a national education campaign concerning the changes to modern awards

affecting the medical industry. Working with the AMA, educational materials were developed and distributed amongst the industry.

We subsequently initiated the program as an opportunity to assess compliance levels in South Australia. We decided to focus the program on Levels 1 and 4 of the *Health Professionals and Support Services Award* and the *Aged Care Award 2010*, as the lower level employees are considered the most vulnerable.

Due to labour shortages in the sectors, we understood many new workers are sourced from overseas using various Commonwealth visa arrangements. Although English language is a requirement for these sectors, many overseas workers have come from countries where English is not the dominant language. Many of these workers have difficulty understanding the Australian workplace relations system and their own rights and entitlements.

What did we do?

We commenced the program by engaging with industry associations and seeking their input, to ensure its effectiveness. We issued an initial media release and held several information sessions in metropolitan and regional locations to inform employers about the program and their workplace obligations.

Having provided the industry with information about the program, we then commenced audits of selected businesses. We randomly selected 178 businesses for assessment. We wrote to the selected businesses to

advise we would be assessing their records during a visit to their premises.

Between September and December 2011, we visited the businesses to review and assess the following records:

- pay slips and time records
- rates of pay and penalty rates
- overtime entitlements
- general conditions and contract arrangements.

We assessed these records against the relevant modern award, the Act and the Regulations.

Where we found an employer to be compliant we notified them in writing of the outcome.

Where we identified potential contraventions we conducted further investigation. If we confirmed the contraventions, we explained the contraventions to the employer and what steps were required to rectify them. We also asked them to rectify the contraventions and provide evidence of having done so.

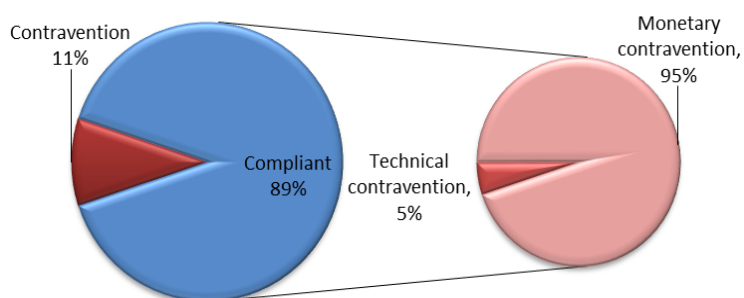
What did we find?

Of the 178 audits conducted, we found 158 (89%) businesses compliant and 20 (11%) in contravention.

During the program we recovered \$109 962 in underpayments for 563 employees.

Of the 178 businesses audited, 19 (10%) had monetary contraventions, one business (1%) had a technical contravention relating to payslips, and 158 (89%) were compliant.

Chart 1- Audit results:



Underpayments

From the 19 businesses with monetary contraventions we recovered underpayments ranging from just over \$6 to just under \$35,000. Nine businesses recorded underpayments of less than \$500, and three businesses had underpayments of more than \$10 000.

The largest combined recovery was \$70 803 for 286 employees because of an expiring enterprise agreement affecting three associated businesses. The agreement's rates of pay fell below the applicable modern award rates of pay. Once this was identified the employer agreed to pay back all entitlements to affected employees.

Other findings

Many businesses told inspectors they welcomed the information we provided as it assisted them to check they were complying.

We found that most employees in the sector were women.

The average age of employees in the acute care and aged care sectors was more than 50 years.

Many of the employers were members of a registered association which accounted for a high number of enterprise bargaining arrangements. These agreements tended to contain higher than the minimum rates of pay contained in the modern awards.

We also found several employers using Individual Flexibility Arrangements particularly for professional and semi-professional occupations.

Concluding remarks

We were pleased to find these sectors had a very high level of compliance.

This could be because of the number of State and Commonwealth regulatory obligations placed on these sectors and the high level of membership of an employer association.

We also hope the positive impact of the educational campaign conducted by the AMA and FWO in early 2011 could also have played a part in an enhanced compliance rate.

Although we found some businesses had underpaid staff, including the business with an expired enterprise agreement, all employers voluntarily rectified the contraventions identified.

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the Fair Work Act 2009 on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace.

Our education and compliance campaigns target specific industries to assist them achieve compliance with national workplace laws. Our focus is usually industries that need assistance with compliance and employ vulnerable workers.

We like to work with relevant industry associations and unions to deliver our campaigns. We rely upon their 'real world' knowledge and communication channels to design and deliver our education activities and products.

This report covers the background, method and findings of the SA Private hospitals, aged care centres and nursing hire agencies audit program.

For further information and media enquiries please contact: media@fwo.gov.au

If you would like further information about the Fair Work Ombudsman's targeted campaigns please contact Steve Ronson, Executive Director - Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

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