



Australian Government

Fair Work

OMBUDSMAN

Tasmanian Unpaid Work Campaign 2009

Final Report

Summary

In September 2009, the Fair Work Ombudsman (FWO) undertook a fact finding and education campaign of Hobart retail and hospitality employers. The campaign focused on the issues of paying staff for all time worked including outside of normal trading hours.

Working in collaboration with key industry stakeholders, the campaign was widely promoted amongst both employers and employees in and around Hobart.

During the course of the campaign, we visited 55 businesses and found that it was a relatively frequent practice for employees to be working outside normal trading hours and not being paid for these times.

We advised both employers and employees that payment should be made for all work performed and that we would be conducting follow up audits in the future to ensure compliance.

Background

The FWO Tasmanian office had received a substantial number of reports from high school students working in the retail and hospitality industry regarding non payment for work performed before and after normal trading hours. This intelligence was obtained by Fair Work Inspectors whilst conducting workplace rights educational visits at local schools.

Further, the FWO had commenced litigation against a company found to have required young casual staff to complete unpaid work.

It was therefore considered that it would be worthwhile to undertake a series of field visits to determine the prevalence of this practice and to use the opportunity to meet with employers and discuss their Commonwealth law obligations.

Campaign aim & objectives

The aim of the Tasmanian Unpaid Work Campaign was to identify the prevalence of the practice of non payment for work performed before and after normal trading hours.

The specific objectives were:

- to identify the frequency that employees were not being paid for work outside of normal trading hours
- to inform employers of their obligations to pay for all hours worked
- to inform employees of their rights to be paid for all hours worked

Stakeholder involvement

On 1 October 2009, the day following the issue of a media release, we wrote to the Retail Traders Association of Tasmania, the SDA, City Heart Business Association, Workplace Standards Tasmania, Unions Tasmania, the Tasmanian Chamber of Commerce and the Management of Eastlands Shopping Centre.

The purpose of the letter was to advise the stakeholders of the campaign, seek their feedback on the campaign strategy and ask for their assistance in promoting the campaign to their members and tenants.

Methodology

As the focus of the campaign was on work completed outside normal trading hours, we first undertook surveillance of hospitality and retail businesses at Eastlands Shopping Centre in Rosny Park before opening hours. From this surveillance activity we were able to determine which businesses had employees completing work duties prior to opening hours.

We then visited all businesses in the shopping centres, including those where we saw employees working before opening hours. During these visits we spoke to the employers about the requirement to pay staff for all time worked. Where possible we also spoke with employees regarding their workplace rights in terms of payment for work completed outside normal trading hours.

Where we were able to prove that an employer was not accurately recording the actual start and finish times of their employees we issued them with a findings letter.

Results

We undertook visits to 55 premises and found that it was a relatively frequent practice for employees to be working outside normal trading hours and not being paid for these times.

In some cases it was simply an expectation that workers would be available 5 - 10 minutes before opening times. However, in other cases workers would spend an additional 15 to 40 minutes working outside normal trading hours.

We issued 4 finding letters where there was evidence of employers not accurately recording the start and finish times of their employees.

However the overall underpayments were often difficult to prove due to lack of records, the fact that the work was carried out by store managers as part of their salary package and in some cases it was the workers choice due to their personal transport arrangements.

We therefore mainly used these visits as an opportunity to advise employers of the need to review time record keeping practises and to ensure employers are paid for all time worked. Further that we would return at a later date to ensure that they were meeting these obligations.

Conclusion

The findings of these visits show there is prevalence of the practice of employers working, or being required to work, outside normal trading hours and not being paid.

This campaign was a fact finding and educative exercise. However the findings indicate that there is a need for FWO to continue to monitor this issue and undertake follow up audits of the businesses in the near future.

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