

Not for profit back-pays \$370,000 to workers after disability classification mistake

(www.fairwork.gov.au/%E2%80%9C#twitter) 21 July 2017

A not-for-profit business in northern NSW inadvertently underpaid 18 employees a total of more than \$370,000 after incorrectly classifying each of them as an 'employee with a disability', an audit by the Fair Work Ombudsman has found.

The employees were underpaid by Challenge Community Services, which provides supported employment for workers with a disability in sewing and laundry services, waste recycling and document scanning services in Tamworth, Muswellbrook and Narrabri.

Fair Work Ombudsman inspectors audited the organisation last year after receiving requests for assistance from a number of workers.

Inspectors found that the Enterprise Agreement that applies to Challenge Community Services allows for workers eligible to receive the Commonwealth Disability Support Pension to be classified as 'employees with a disability' and paid a pro-rata amount of the Award wages that apply to their positions, with the pro-rata amount determined by a skills assessment.

Inspectors found that Challenge Community Services had correctly classified most of its employees and was paying them correctly. However it had incorrectly classified 18 workers as being 'employees with disability' as they were neither in receipt of, nor eligible for, the Disability Support Pension.

The Fair Work Ombudsman determined that the underpayments resulted from Challenge Community Services having limited information on the status of some workers' eligibility for the Disability Support Pension and inadequate human resources procedures.

Challenge Community Services fully co-operated with the Fair Work Ombudsman and proactively reviewed the 18 employees' full employment periods to determine it had inadvertently underpaid them a total of \$371,876 in wages and superannuation between 2010 and 2016.

The workers were aged between 17 and 64, including five under 25 and two in their 60s.

The largest individual underpayment was \$63,822 of a worker, now aged in his 50s, who was paid an hourly pro-rata rate as low as \$8.82.

Challenge Community Services has back-paid all workers in full and the organisation and its chief executive, Barry Murphy, have entered into an Enforceable Undertaking (EU) with the Fair Work Ombudsman to ensure future compliance with workplace laws.

Acting Fair Work Ombudsman Mark Scully says an EU is an appropriate outcome given the misclassification was not deliberate and full back-payments were made.

"This matter has been a significant wake-up call for Challenge Community Services and it serves as a good reminder to operators in this sector to ensure they are complying with workplace laws," Mr Scully said.

"This matter highlights the accountability and responsibility required of employers engaged with vulnerable workers, such as those with a disability.

"Any operators not certain of their obligations should review their current situations and take immediate remedial action if required," Mr Scully said.

Under the EU, Challenge Community Services must commission an external audit of its compliance with workplace laws across two financial years and rectify any contraventions found.

It must also ensure Mr Murphy and other managerial staff complete training on their workplace obligations, display public notices in the three workplaces detailing the contraventions, and provide written apologies to the workers.

Mr Scully says the EU will assist Challenge Community Services to improve its knowledge and implementation of practices aimed at ensuring compliance with workplace laws.

Mr Scully says the Fair Work Ombudsman is committed to helping employers understand and comply with workplace laws, but operators need to make an effort to get the basics right in the first place.

Employers and employees can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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Download the [Challenge Community Services Enforceable Undertaking \(DOCX 157.6KB\)](http://www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-challenge-community-services-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-challenge-community-services-redacted.docx.aspx) (PDF 859.1KB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-challenge-community-services-redacted.pdf.aspx)

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