

Perth company faces Court over pregnancy discrimination allegations

20 March 2017

NOTE (2/9/2019): Allegations outlined in the FWO's media releases relating to the commencement of litigation reflect those put forward in our Statement of Claim at the time of filing. Some details may vary over the course of the proceeding. This matter now concerns only one alleged contravention of section 351 of the Fair Work Act, namely that the Respondents took adverse action by refusing to allow the employee to return to work on 4 April 2016 on a full-time basis due to her sex and pregnancy. Other alleged contraventions have been dismissed or are no longer pressed.

The operators of a Perth gourmet food distribution business are facing Court for allegedly discriminating against a pregnant employee.

The Fair Work Ombudsman has commenced legal action in the Federal Court against Austrend International Pty Ltd, trading as Austrend Foods, and company director and part-owner Denzil Godfrey Rao.

The Fair Work Ombudsman alleges Austrend and Mr Rao took unwarranted performance-management action against a sales executive after she fell pregnant with her first child, denied her lawful right to return to work after taking parental leave and constructively dismissed the employee by presenting her with a pre-written resignation letter after she informed management that she had fallen pregnant with her second child.

In early 2015, the employee informed Austrend that she intended to commence a period of parental leave in mid-2015. The Fair Work Ombudsman alleges that a short time later, Austrend raised performance issues with her for the first time and subsequently issued her a written warning.

It is alleged that Austrend's performance management action against the employee was unwarranted and was a form of adverse action taken against the employee in response to her flagging her intention to exercise her lawful right to take parental leave.

Two months after receiving the written warning, it is alleged that the worker agreed to delay her maternity leave in order to assist Austrend in covering a staff shortage. The employee's formal leave period began one day before she gave birth to her first child.

The Fair Work Ombudsman alleges that in November 2015, while the employee was on parental leave, Austrend rejected her request to return to work with flexible working arrangements and advised in writing that the employee could return to full-time duties in April 2016.

The employee subsequently fell pregnant for a second time and advised Austrend of her pregnancy in March 2016. The Fair Work Ombudsman alleges the employee advised Austrend that it was still her intention to return to work in April, however the company told her it was extending her unpaid leave until after the birth of her second child.

It is alleged that the employee subsequently alerted Austrend to the fact she had not requested an extension of unpaid leave and informed the company that she had received advice that she was within her rights to return to work in April 2016 as originally agreed.

It is alleged that Mr Rao and Austrend responded by denying the existence of any agreement that she return to work in April 2016, raised allegations of performance issues and asked her to obtain a medical certificate as to her fitness to return to work.

It is alleged that after the employee provided a medical certificate in July 2016, Austrend asked her to attend a meeting where she was asked to sign a Letter of Resignation pre-prepared by Austrend management.

It is alleged the Letter of Resignation, which the employee signed, amounted to a constructive dismissal of the employee.

It is alleged the conduct of Mr Rao and Austrend in denying the employee's lawful right to return to work and constructively dismissing her contravened the National Employment Standards and the pregnancy discrimination and workplace rights provisions of the Fair Work Act.

Fair Work Ombudsman Natalie James said the agency initiated proceedings as the allegations were particularly serious.

“Under the Fair Work Act employees have a lawful right to return to work following a period of parental leave,” Ms James said.

“Allegations that pregnant women are facing discrimination in the workplace are of grave-concern and it is important that all employers are aware of their obligations under the law.

“A 2014 report published by the Australian Human Rights Commission found that 49 per cent of mothers surveyed reported experiencing some form of discrimination during pregnancy, while on parental leave or returning to work.

“Under the Fair Work Act, it is unlawful to discriminate against employees on the grounds of pregnancy, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

“Discriminatory behaviour can include dismissing an employee, threatening to dismiss an employee, reducing an employee's hours, denying training and promotion opportunities or refusing to employ, promote or train an employee,” Ms James said.

The Fair Work Ombudsman is seeking penalties against Austrend and Mr Rao for alleged contraventions of workplace laws, as well as a Court Order requiring them to pay compensation to the employee for economic and non-economic loss.

Mr Rao faces penalties of up to \$10,800 per contravention and the company faces penalties of up to \$54,000 per contravention.

Editor's note:

The Fair Work Ombudsman has secured penalties against a number of employers for contravening the pregnancy discrimination provisions of the Fair Work Act.

The operators of a chain of Victorian discount retail stores were penalised a total of \$53,592 in 2013 after reducing a pregnant employee's work hours and then constructively dismissing her (Read the media release: [Record penalties imposed in pregnancy discrimination matter \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/november-2013/20131108-felix-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/november-2013/20131108-felix-penalty)).

The operators of a Victorian aged care facility were penalised a total of \$30,888 in 2013 for discriminating against an employee when she attempted to return from parental leave (Read the media release: [Fines imposed over treatment of employee seeking to return from maternity leave \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/april-2013/20130424-a-dalley-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/april-2013/20130424-a-dalley-penalty)).

The former operator of a mobile phone business was penalised \$5940 in 2012 for discriminating against a Geelong employee when she attempted to return from parental leave (Read the media release: [Phone retailer fined almost \\$6000 over discrimination against new Mum \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/may-2012/20120510-ramadan-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/may-2012/20120510-ramadan-penalty)).

The former owner-operators of a Sydney printing business were fined \$23,760 and ordered to pay \$2,207 compensation in 2012 after demoting and mistreating an employee after she told them she was pregnant (Read the media release: [Court imposes \\$23,000 penalty over sex and pregnancy discrimination \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/february-2012/20120202-wongtas-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/february-2012/20120202-wongtas-penalty)).

The operator of a Perth child care centre was penalised \$13,200 in 2012 and ordered to pay \$5000 compensation to an employee it pressured into resigning after she became pregnant (Read the media release: [Operator of Perth child care centre fined over pregnancy discrimination \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/october-2012/20121018-wko-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/october-2012/20121018-wko-penalty)).

Employers and employees seeking assistance should visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

Online Learning Courses (www.fairwork.gov.au/how-we-will-help/online-training/default) on Workplace Flexibility and Diversity and Discrimination from the Fair Work Ombudsman, available on the website, seek to help small business to understand the law.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) , the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au .

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