

## **\$70,000 in penalties after overseas workers' vulnerability deliberately exploited**

23 October 2017

The FWO has secured more than \$70,000 in penalties against the former operators of a business for ignoring prior warnings and deliberately exploiting vulnerable overseas workers in Melbourne.

Melbourne couple Haim Tomer Diamond and Rina Diamond have been penalised \$30,600 and \$40,000 respectively, in the Federal Circuit Court for underpaying employees \$34,915.

At a hearing in December last year, the couple were ordered to pay outstanding amounts of \$17,247 to 11 employees at two retail kiosks operated by the Diamonds at the Chadstone and Northland shopping centres.

The employees were mostly young, overseas workers on student or working holiday visas.

Mr and Mrs Diamond's company, Corioliss Pty Ltd, was placed into external administration late last year and was not pursued in Court.

The penalties and back-pay orders imposed by Judge Norah Hartnett are the result of an investigation and legal action by the Fair Work Ombudsman.

Judge Hartnett found that the contraventions were "clearly deliberate".

Mrs Diamond was singled out for her lack of genuine contrition, and for threatening one of the workers.

Judge Hartnett found that Mrs Diamond had threatened to notify the Department of Immigration and Border Protection that one international student employee had been working more than the 20 hours per week allowed under her visa unless the student withdrew her complaint to the Fair Work Ombudsman.

Mrs Diamond sent the student an email stating: Your limit of 20 hours work as a student was not kept as it should. I have to forward this information to the immigration unless the complaint will be cancelled by you.

Judge Hartnett said the statement "exhibits a concerning awareness of the employee's vulnerability and a willingness to exploit such vulnerability to the Respondents' benefit".

Mr and Mrs Diamond had been placed on notice of their obligations to pay minimum rates of pay to employees, with the Fair Work Ombudsman previously issuing a Letter of Caution as a result of earlier investigations.

Despite this, Mr and Mrs Diamond's business paid 10 out of the 11 employees rates held to be "grossly less than the lawful rates", of between \$7.86 and \$14.90 per hour, for work performed between July 2014 and January 2015. This led to significant underpayments of their minimum hourly rates, weekend and public holiday penalty rates, casual loadings and minimum engagement pay.

The largest individual underpayment was \$4434.

When Fair Work inspectors received an underpayment allegation and investigated, Mrs Diamond further contravened workplace laws by knowingly providing inspectors with false and misleading records.

Fair Work Ombudsman Natalie James says the Court's judgment serves as yet another warning that deliberately exploiting vulnerable workers is extremely serious conduct that will not be tolerated.

"We are deeply concerned by any allegation that someone would seek to prey upon the vulnerabilities of any member of the workforce for their own personal gain," Ms James said.

The Fair Work Ombudsman recently published an open letter to international students to encourage them to seek free help from the agency if they experience any issues while working in Australia.

"We are seeking to raise awareness among international students that in line with an agreement between the Fair Work Ombudsman and DIBP, you can seek our assistance without fear of your visa being cancelled, even if you've worked more hours than you should have under your visa," Ms James said.

Ms James says employers should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has now come

into effect, increasing the maximum penalties for conduct including deliberate exploitation of workers and false records.

“The maximum penalties available for serious exploitative conduct that occurs today or in the future are now significantly higher than were available to be imposed in matters such as this one - and we will not hesitate to seek maximum penalties from the courts when it is in the public interest,” she said.

Employers and employees can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) (<http://www.fairwork.gov.au/>) or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace. Small business operators can opt to receive priority service and a free interpreter service is available on 13 14 50.

The Fair Work Ombudsman’s online tools and resources can assist employers to determine their applicable Award, as well as classification and pay rates, allowances, overtime and penalty rates.

The Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

The Fair Work Ombudsman recently launched its popular Anonymous Report function in 16 languages other than English, enabling non-English speakers to report potential workplace breaches in their own language, without being identified. The tool can be accessed at [www.fairwork.gov.au/inlanguageanonymousreport](http://www.fairwork.gov.au/inlanguageanonymousreport) (<http://www.fairwork.gov.au/inlanguageanonymousreport>) .

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app ([www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app)) is aimed at tackling the persistent problem of underpayment of vulnerable young workers by using geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

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