

## Young Lake Macquarie labourer back-paid \$25,000

28 September 2017

The Fair Work Ombudsman has assisted three workers employed by businesses in the Newcastle/Hunter region of NSW to recover \$38,000 in unpaid wages and entitlements.

In one matter, a young labourer in Lake Macquarie was back-paid \$25,220 after he was underpaid as a result of being incorrectly classified as an apprentice.

The labourer was initially employed on a casual basis and was paid the correct entitlements under the Manufacturing and Associated Industries and Occupations Award.

The labourer and his employer then agreed that the labourer would commence an apprenticeship; however the employer failed to properly complete the paperwork and registration process required to enter into a formal training arrangement.

The employer then commenced paying the labourer the lower, applicable apprenticeship rates of between \$9 and \$12.08 for ordinary hours and \$13.50 to \$24.16 for overtime hours for a period of about a year.

As the employer had failed to complete the steps required to enter into a formal training arrangement, the employer was lawfully required to pay the worker the full Award rates that applied to his employment position.

The Fair Work Ombudsman's investigation, which commenced after the worker lodged a request for assistance, determined the correct classification of the worker was as a level one and later level two engineering/manufacturing employee under the Manufacturing and Associated Industries and Occupations Award – and at the time, he was entitled to rates of up to \$17.79 for ordinary hours and up to \$35.58 for overtime hours.

The investigation determined that other employees at the business, including another apprentice, were being paid their correct lawful minimum entitlements.

Fair Work Ombudsman Natalie James says the business was issued with a Letter of Caution in relation to the underpayment and warned that it risked facing enforcement action for any similar issues in future.

“A Letter of Caution is a written warning given to a party when we have found breaches and want to put them on notice that future breaches could result in court action,” Ms James said.

The business was also issued with a \$900 Infringement Notice (on-the-spot fine) for failing to comply with the requirement to keep a record of overtime hours worked.

In a separate matter, a supervisor employed by a Beresfield business received \$6800 in unpaid redundancy entitlements with the help of the Fair Work Ombudsman.

The employer informed the supervisor that there was no longer any work available at the work site and he was being made redundant. A short time later the supervisor secured alternative employment.

The employer had incorrectly assumed that because the supervisor was leaving his position during the redundancy notice period he was not entitled to a redundancy payment. The employer co-operated and promptly back-paid the worker after being educated by the Fair Work Ombudsman.

Ms James says ignorance of workplace laws is no excuse for underpaying workers.

“Employers have a lawful obligation to ensure they are aware of the minimum entitlements that apply and that they pay their employees correctly,” she said.

In a third matter, a concreter in Newcastle was back-paid \$6000 after the Fair Work Ombudsman assisted him to recover unpaid termination entitlements.

Ms James says the employers involved in all three cases are now on notice to pay employees their full lawful entitlements and enforcement action will be considered if any non-compliance issues are discovered at the businesses in future.

“Employers must be aware that we are prepared to take enforcement action in response to reckless, deliberate or repeated breaches

of pay and record keeping laws,” she said.

“We conduct follow-up audits of businesses previously found to be non-compliant to make sure they have changed their ways. Repeat offenders can expect to be subject to serious enforcement action including potential litigation.

“There has never been so much freely available information at [www.fairwork.gov.au](http://www.fairwork.gov.au) to assist employers to understand and comply with their obligations under workplace laws.

“In our experience many businesses are overconfident when it comes to the intricacies of our workplace laws, however we will be taking an increasingly hard line with employers who have significant compliance issues and cannot demonstrate that they made a diligent effort to understand what Award or industrial instrument applies to their workplace, what the correct classification for their employees is and what minimum pay rates apply.”

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.

Employees can [get help resolving workplace issues \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues) and also [report a workplace concern anonymously \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report) on the Fair Work Ombudsman’s website.

Employers and employees seeking assistance can also contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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