

## More than \$192,000 in penalties for former 7-Eleven operators who underpaid vulnerable workers

10 April 2018

The Federal Circuit Court has imposed penalties totalling \$192,961 against the operators of two Brisbane CBD 7-Eleven stores for short-changing workers by more than \$31,000.

The penalties are the result of a legal action by the Fair Work Ombudsman after its investigation found that 21 employees across the two stores had been underpaid a total of \$31,507.27 over a 12-month period.

Viplus Pty Ltd, which operated a store in Adelaide Street until July 2017, was penalised \$88,140, while Vipper Pty Ltd, which operated a store in George Street until May 2017, was penalised \$68,262. Penalties totalling \$36,559 were also handed down against Jason Yuan, a director of both companies.

The stores were two of 20 7-Eleven outlets targeted for surprise night-time visits by the Fair Work Ombudsman as part of a tri-State operation in September 2014.

The Fair Work Ombudsman has taken legal action against 11 7-Eleven operators since 2009.

In this matter, inspectors found that the workers at both stores were paid flat rates for all hours worked, save for public holidays where they received an additional \$20 per hour in cash.

Given the 24 hour, seven-day nature of the businesses, this resulted in significant underpayments of Saturday and public holiday penalty rates, overtime rates and shift work rates stipulated by the General Retail Industry Award 2010.

Two workers at the Adelaide Street store were also found to have been paid at the incorrect classification.

Individual underpayments ranged from \$98.36 to \$5080.16. They have all now been rectified

The respondents were also penalised for failing to meet record-keeping and payslip requirements, including by failing to include information in respect of cash payments made to some of the employees.

In her judgment, Judge Mercuri noted that the underpayments were “substantial”, particularly given the low-skilled nature of the work and the vulnerability of the workers due to their age and, in some cases, their visa status.

“Given that many of the employees of both Viplus and Vipper were in Australia on various visas, with many being young workers, the impact of the underpayments was significant for each of the affected employees,” Judge Mercuri said.

In determining the penalties, Judge Mercuri also pointed out that Mr Yuan had been running the stores for over twelve years, had a background in finance, banking and project management and had access to significant training and support from the 7-Eleven head office.

In addition, her Honour noted the Fair Work Ombudsman had previously issued Vipper and Mr Yuan with a letter of caution in 2013 after an investigation found that workers at the Adelaide Street store were not being paid applicable weekend and public holiday penalty rates. At the time, the Fair Work Ombudsman advised Mr Yuan about his obligations to pay penalty rates as stipulated under the Award.

Judge Mercuri found this “continued failure to ensure compliance with the Award following the issuing of a letter of caution to Vipper Pty Ltd” to be a relevant factor in determining the penalties for Vipper and Mr Yuan.

Acting Fair Work Ombudsman Kristen Hannah says that the regulator takes a particularly dim view of employers who continue to breach workplace laws after being explicitly advised of their obligations.

“Employers must recognise that significant consequences will follow when they knowingly flout the law,” Ms Hannah says.

“There is no excuse for continued non-compliance by a business when it has been placed on notice and we will not hesitate to pursue serious enforcement action when this occurs.

“We have no patience for business operators who fail to respect the law and ignore our advice, and the penalties handed down in this case reflect the seriousness with which such matters will be dealt.”

Ms Hannah says that the Fair Work Ombudsman takes the exploitation of young workers and visa holders particularly seriously.

“We know that these cohorts face specific vulnerabilities in the workplace due to a lack of awareness of workplace laws and a reluctance to speak up if something is wrong,” Ms Hannah says.

“There is no place for the deliberate exploitation of vulnerable workers in Australian workplaces.”

Ms Hannah says the commencement of the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has increased the maximum penalties for employers who knowingly exploit workers.

“Businesses should be aware that serious breaches of workplace laws have increased ten-fold and can now attract penalties of up to \$630,000 per contravention for companies and \$126,000 for an individual,” Ms Hannah says.

7-Eleven entered into a [Proactive Compliance Deed \(https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/compliance-partnerships/list-of-proactive-compliance-deeds\)](https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/compliance-partnerships/list-of-proactive-compliance-deeds) with the Fair Work Ombudsman in late 2016, committing to a range of measures designed to ensure all its workers receive their lawful entitlements through strong accountability for all operators across its franchise network and supervision by the Fair Work Ombudsman.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50. Information on the website can be translated into 40 languages other than English.

NOTE: Vipper Pty Ltd and Viplus Pty Ltd no longer own or operate the Adelaide Street or George Street 7-Eleven stores in Brisbane. The Fair Work Ombudsman makes no allegations against the current operators.

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**Page reference No: 8254**

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