

\$300,000 penalties and back-pay for “flagrant” underpayments of first aid workers

12 April 2018

The operators of a Melbourne health services company that a Judge said showed a “flagrant disregard” for its first aid responder staff has been penalised \$300,000 in the Federal Circuit Court, following legal action brought by the Fair Work Ombudsman.

Melbourne man Paul Tempany has been penalised \$50,000 and his company Acute Health Pty Ltd an additional \$250,000 for underpaying staff, many of whom were university students.

Tempany and Acute Health underpaid six employees, one aged just 21, a total of \$13,715 between March 2014 and December 2015. The workers were engaged as medical first responders on a casual basis to provide first aid services at events and functions in Victoria and NSW.

In addition to the penalties, the Court also imposed orders for workers to be fully back-paid.

The \$300,000 penalties are the second largest secured by the Fair Work Ombudsman in a case involving work in Victoria, and the third largest in a case involving work in NSW.

Underpayments were partly the result of a failure to pay employees for all work performed. One employee was paid nothing for more than 30 hours of work.

Acute Health largely engaged the employees on flat hourly rates of \$25, which was insufficient to meet required penalty and overtime rates at the time of up to \$48.53 per hour on public holidays and \$38.82 for overtime.

The result was underpayment of employees’ minimum hourly rates, casual loadings and penalty rates for overtime and public holiday work. Tempany and his company also failed to provide minimum shift pay and a laundry allowance, failed to reimburse travel expenses, and made unlawful deductions from wages to cover a uniform bond.

Individual underpayments ranged from \$404 to \$3517. Underpayments represented between 33 and 100 per cent of each worker’s entitlement.

Tempany and Acute Health also contravened workplace laws by failing to comply with six Notices to Produce issued by a FWO inspector and by providing an inspector with false pay records.

Judge Alister McNab said the court evidence displayed a “pattern of conduct” by Tempany and his company.

“It seems to be a well-practised methodology that the respondents have used with these employees and there is a flagrant disregard for the rights of those employees,” Judge McNab said.

This was despite the Fair Work Ombudsman providing education to Tempany on obligations under workplace laws in 2012 and again in 2015.

“Notwithstanding the efforts of the FWO to educate the respondents, it appears that there has been no satisfactory change to the mode by which this company operates in relation to the way it treats its employees,” Judge McNab said.

The impact of the underpayments on the employees were “significant”, even if the dollar amounts were not, Judge McNab said.

“The persons underpaid were generally students who were relying on the income to fund living expenses whilst studying. The underpayments represent a major percentage of the entitlements.”

Judge McNab criticised what he described as Tempany’s apparent “pretended cooperation” with the Fair Work Ombudsman.

“There has been a failure on the part of [Mr Tempany] to engage in any meaningful way with the Fair Work Inspector...since about April 2016 and there has been no meaningful engagement with this proceeding since it was filed.”

Judge McNab also made orders restraining Tempany and his company from any further breaches of relevant workplace laws.

“The Court makes those orders because it is mindful that members of the public, in particular people who are undertaking important work areas where matters of public health are concerned, should be protected from operators of this kind and prospective employees should be also protected from respondent employers who frequently breach industrial awards,” Judge McNab said.

The injunctions mean Tempany and his company could face contempt of court proceedings for any further contraventions proven in court.

An order was also made for Acute Health to engage an external auditor to monitor the company's future workplace compliance and report results to the Fair Work Ombudsman.

Acting Fair Work Ombudsman Kristen Hannah says the substantial penalties were a stark reminder for all employers of the consequences of ongoing failures to meet workers' entitlements.

"We simply have no tolerance for employers who trample on workers' rights and refuse to change their ways, even when directly informed of their obligations," Ms Hannah says.

"The financial penalties for exploiting workers have never been higher, and we will take enforcement action, including litigation, in egregious cases like this when advice is ignored."

Ms Hannah says mistreatment of young workers remained a focus area for the FWO.

"Employers should be aware that we treat cases involving underpayment of young workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements and a reluctance to complain," she says.

Employees and employers 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 and information on the website is translated into 40 languages.

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