

Swimland signs up to scrutiny after more than 1300 staff underpaid \$1.4 million

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A swim school franchise network that underpaid its staff across a six-year period is required to implement extensive measures to ensure compliance with workplace laws, after signing up to an Enforceable Undertaking (EU) with the Fair Work Ombudsman.

Franchisor Paul Sadler Swimland Pty Ltd and 12 franchisees entered into an EU following the disclosure of widespread underpayments throughout its network, with 1308 workers underpaid a combined \$1,425,477 between July 2010 and March 2016.

The EU imposes significant obligations on the franchisor and franchisees, including requiring third party audits of the swim schools across Melbourne and Bendigo during the next two years to ensure ongoing compliance.

Following staff concerns about underpayments at the Essendon franchise in 2015, by early 2016 issues with pay arrangements had been identified across the network, prompting a full review.

The underpayments related to breaches of both the Fitness Industry Award 2010 and individual enterprise agreements signed by each of the 12 franchisees in 2013.

The underpayments arose from failing to correctly progress employees according to their experience, implement junior workers' age increments; and apply the Award's transitional wage provisions. Most workers were swim instructors or administrative staff, with a large proportion being young workers.

Total underpayments at each franchise ranged from \$40,107 at the Braybrook business to \$445,580 at Essendon. Individual underpayments for workers ranged from three cents to \$14,891.

The franchisor reported the breaches to the Fair Work Ombudsman in late 2016. By this time the franchisor had already calculated the underpayments, with the assistance of an external audit team, and had commenced repaying workers.

Paul Francis Sadler, the founder of the Swimland network, is the director of the franchisor and director or co-director of ten of the franchisees.

The franchisor and franchisees fully co-operated with the Fair Work Ombudsman in reviewing the workplace issues and entered into the EU to ensure future compliance. All relevant managerial staff completed training in workplace laws last year, before the EU was executed.

The franchisees have rectified all underpayments and also paid affected staff an additional five per cent voluntary payment, totalling \$71,272 across the network.

In recognition of its contrition for the underpayments, under the EU the franchisor has also undertaken to make total donations of \$50,000 to two charities, with The Smith Family and Western Chances to receive \$25,000 each.

Acting Fair Work Ombudsman Kristen Hannah says the EU will contribute to sustainable compliance across the Swimland network, ensuring hundreds of workers are paid correctly going forward.

"Many of these workers were young and the EU binds the Swimland network to ensure there are systems and training measures that can prevent similar breaches occurring in the future," Ms Hannah says.

"It also includes acknowledgment from the franchisor, where it was not the employer of the staff, that it was an accessory to these contraventions.

"While the underpayments in this matter were not deliberate, this has been a significant, expensive wake-up call for Swimland and serves as a clear reminder to those in franchise networks that all are responsible for ensuring workers entitlements' are met.

"Breaching the terms of an EU is grounds for litigation and the community can be assured that we will be monitoring Swimland closely to ensure it complies with the terms of the undertakings."

Law changes passed last year and in effect from 27 October 2017 have since expanded the circumstances in which franchisors can be held responsible if their franchisees don't follow workplace laws.

Ms Hannah says an EU was an appropriate outcome in this matter given the full cooperation from the franchisor and franchisees and the rectification of back-payments.

“EUs have allowed us to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings, which are often lengthy and can significantly extend the time it takes for workers to receive their entitlements,” Ms Hannah says.

Under the EU, the franchisor must not only commission an external audit of its, and its franchisees’, workplace compliance across two financial years and rectify any contraventions found, but also maintain a dedicated email address for current or former employees to make enquiries about any concerns or pay issues.

The franchisor must display notices in metropolitan newspapers and the company website, and the franchisees must display notices at their workplaces and on their Facebook pages, detailing the breaches as well as statements they regret and apologise to workers for their conduct. The franchisor and each franchisee must also register with the Fair Work Ombudsman’s online My Account portal.

Ms Hannah says employers should be aware that the Fair Work Ombudsman places a high priority on ensuring young workers receive their full entitlements because they can be vulnerable if they are not fully aware of workplace rights or reluctant to complain.

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.

Employers and employees 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.

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Download the [Paul Sadler Swimland Pty Ltd Enforceable Undertaking \(DOCX 166.5KB\)](https://www.fairwork.gov.au/ArticleDocuments/1179/paul-sadler-swimland-eu.xlsx.docx.aspx) (<https://www.fairwork.gov.au/ArticleDocuments/1179/paul-sadler-swimland-eu.xlsx.docx.aspx>) (PDF 1.9MB) (<https://www.fairwork.gov.au/ArticleDocuments/1179/paul-sadler-swimland-eu.pdf.aspx>)

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