

Pharmacy operators penalised for underpaying migrant “93 weeks’ wages”

17 April 2018

The operators of a number of ‘Save and Deliver’ pharmacies in Sydney have been penalised a total of \$45,000, after underpaying a migrant employee the equivalent of 93 weeks’ wages over a period of almost four years.

Sydney men Nader Bastawrose, Amgad Samaan and Ashraf Youssef - who operate four pharmacies under the Save and Deliver brand – have each been penalised \$15,000 in the Federal Circuit Court.

The penalties are the result of an investigation and legal action by the Fair Work Ombudsman.

The underpaid worker is an Egyptian migrant who spoke limited English.

He delivered medication to customers’ homes, transferred supplies between Save and Deliver pharmacies in Liverpool and Mt Druitt, and assisted with various duties in the Mt Druitt pharmacy between September 2009 and June 2013.

He was paid flat hourly rates of between \$12 and \$14, but was entitled to receive between \$16 and \$43, depending on his shifts – resulting in a total underpayment of \$62,010.

A second employee was underpaid \$5,296 while working as a pharmacy assistant at a Save and Deliver pharmacy at Shellharbour in NSW.

Pay slip and record-keeping laws were also contravened.

The Fair Work Ombudsman investigated when the employees lodged requests for assistance.

The employees were back-paid only after the Fair Work Ombudsman commenced legal action.

The underpayments occurred despite the Fair Work Ombudsman having previously put Bastawrose, Samaan and Youssef on notice to pay minimum wage rates in the context of investigating three prior underpayment allegations from pharmacy workers.

In his judgment, Judge Robert Cameron said the case involved significant underpayment of low-paid, vulnerable workers and that the Egyptian migrant employee had been underpaid “the equivalent of about 93 weeks’ wages”.

The employee gave evidence that for most of his employment, he worked four days per week for 10 to 12 hours per day, often working more than 40 hours a week.

The employee stated that he did not take any morning tea, lunch or afternoon tea breaks and usually ate his lunch while making deliveries. He was never paid for days he did not work, so he attended work even when he was sick to avoid losing income. The employee stated that he often asked Youssef to increase his pay rate and Youssef always refused and told him that if he disclosed his pay rate to anyone else his employment would be terminated.

The employee stated that he eventually commenced working simultaneously at another pharmacy unrelated to Save and Deliver three days per week because his pay was too low to support himself and his family. This meant he worked every day of the week and did not have any days off.

Judge Cameron found that Bastawrose, Samaan and Youssef were not novice employers and that there was no reason to suspect they were not aware of the applicable employment entitlements.

“The partnership was largely unconcerned with anything other than its own business needs and was largely uninterested in how those demands were affected by the requirements of industrial law,” Judge Cameron said.

Judge Cameron found that the prior complaints to the Fair Work Ombudsman demonstrated that the partnership must have had some knowledge of employee and employer rights and obligations and “points to a degree of culpable recidivism in the contraventions”.

Acting Fair Work Ombudsman Kristen Hannah says cases in which business operators continue to underpay workers even after being put on notice are treated extremely seriously.

“Such a blatant disregard for the rights and entitlements of workers cannot be tolerated,” Ms Hannah says.

“A small number of unscrupulous employers still need to get the message that it is unlawful to pay overseas and migrant workers a ‘going rate’ that undercuts lawful minimum rates.

“Cases such as this one should drive home the point to employers that lawful minimum rates apply to all employees in Australia and are not negotiable.”

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

Resources on the website include a [Pay and Conditions Tool \(PACT\)](https://calculate.fairwork.gov.au/) (<https://calculate.fairwork.gov.au/>) that employers can use to determine the pay rates applicable to their employees, including base pay rates, allowances, overtime and penalty rates.

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app (<https://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 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.

The Fair Work Ombudsman’s Anonymous Report function enables workers to report potential workplace breaches without being identified. Reports can be made in English and 16 other languages at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

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Fair Work Online: www.fairwork.gov.au

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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