

Being “too busy and lazy” to keep records results in \$43,200 in penalties for massage parlour operator

16 February 2018

The operator of a number of massage parlours in Adelaide who said he was “too busy and lazy” to keep proper records has been penalised for contraventions of record-keeping and pay slip laws, following legal action by the Fair Work Ombudsman.

Ming Yuan Hu - who owns and operates a number of massage parlours in Adelaide, including the ‘No Name Massage’, ‘Sakura Massage’, ‘Asian Massage’ and ‘Ma’s Massage’ outlets on Hindley Street – has been penalised \$7200.

In addition, Hu’s companies Wuyu Pty Ltd and 9th Sky Pty Ltd, have each been penalised \$18,000.

The penalties, imposed in the South Australian Employment Court, are the result of legal action by the Fair Work Ombudsman.

The Fair Work Ombudsman audited Hu’s massage parlours in 2016 as part of unannounced visits to 19 massage shops in Hobart and Adelaide, which were conducted in response to concerns of non-compliance in the sector.

However, Hu responded by advising that the records requested by the Fair Work inspector were not kept and that staff were not issued with pay slips.

In an email to a Fair Work inspector, Hu stated that “During the past few years, I did not do the records and other things properly, because I am too busy and lazy”.

The contraventions occurred despite the Fair Work Ombudsman having previously put Hu on notice, during investigations in 2012 and 2014, of the need to comply with record-keeping and pay slip obligations under the Fair Work Act.

Deputy President Michael Ardlie found that the contraventions were “serious”, and said the previous attempts to educate Hu “came to nought”.

“Proper record keeping and the provision of pay slips is essential to ensure there is compliance with workplace laws,” Deputy President Ardlie said.

“The failure to maintain relevant records frustrated the investigation process. Further, it is not known whether employees of the respondent suffered any specific monetary loss or entitlements in the absence of relevant records.”

Fair Work Ombudsman Natalie James agreed, saying Fair Work Inspectors often went to great lengths to reconstruct time and wage records when employers fail to comply with their obligations.

“In the past, our inspectors have translated hand-written diaries, used toll-road dates to reconstruct hours and camped outside businesses to observe when employees come and go, yet sometimes we are still unable to determine whether an employee has been paid correctly in the absence of proper records,” Ms James said.

Ms James says employers should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has now come into effect, which means a reverse onus of proof can now apply when the Fair Work Ombudsman pursues legal action in relation to underpayments that have occurred since the commencement of the Act.

“We welcome these changes,” Ms James said.

“Now, employers who don’t meet record-keeping or pay slip obligations and can’t give a reasonable excuse will need to disprove allegations in wage claims made in a court,” Ms James said.

“If an employee claims they have been underpaid and the employer didn’t keep the right records, make those records available, or give them a pay slip, the employer may need to prove that they did pay the employee correctly or gave them the right entitlements.”

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

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app (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.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 30 languages and is available on the website and fact sheets available include advice on workplace rights for visa holders and migrant workers.

The Fair Work Ombudsman's Anonymous Report function is available in 16 languages other than English, enabling non-English speakers to report potential workplace breaches in their own language, without being identified. The tool can be accessed at www.fairwork.gov.au/inlanguageanonymousreport (<http://www.fairwork.gov.au/inlanguageanonymousreport>)

The Fair Work Ombudsman's online tools and resources can also assist employers to determine their applicable Award, as well as classification and pay rates, allowances, overtime and penalty rates.

The [Pay and Conditions Tool \(PACT\)](https://calculate.fairwork.gov.au/findyouraward) (<https://calculate.fairwork.gov.au/findyouraward>) provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

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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