

Judge imposes \$85,000 penalty as “sharp lesson” for repeat-offender childcare operator

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A Judge has penalised a repeat-offender Melbourne childcare operator \$85,000 for her latest staff underpayments, saying she required a “sharp lesson” to make her appreciate her legal obligations.

The penalty, which is the result of legal action by the Fair Work Ombudsman, has been imposed against Vivien Mahomet for underpaying two vulnerable workers a total of \$14,341 at her Academy for Kids childcare business.

The Fair Work Ombudsman has received numerous underpayment allegations from Mahomet’s employees dating back to 2009 and it is the second time the Agency has secured penalties against Mahomet for underpaying her staff.

In 2014, Mahomet was penalised \$19,980 for underpaying five other childcare workers a total of more than \$16,000.

Handing down the latest penalty, Judge Philip Burchardt found that there was a need to impose a penalty that deterred Mahomet from continuing to breach the law.

“A person who is the subject of a penalty finding in 2014 who continues to contravene in the fashion that the respondent did requires a sharp lesson to make her appreciate more clearly than thus far has apparently been the case what her legal obligations are,” Judge Burchardt said.

“This is all the more the case given that she still operates three childcare centres.”

Mahomet’s Academy for Kids businesses provide before school, after school and vacation childcare services at three sites in Melbourne.

The two childcare workers underpaid in the latest matter were long-term unemployed before commencing employment with Academy for Kids - and Mahomet received \$6000 in Commonwealth wage subsidies for employing them.

The two workers, based at Glen Waverley, were underpaid rates for minimum ordinary hours, overtime and public holidays they were entitled to between September, 2013 and December, 2015.

Annual leave entitlements and broken shift allowances were also underpaid.

The Fair Work Ombudsman investigated after the workers lodged requests for assistance.

Judge Burchardt found that the two workers were “indeed vulnerable employees”.

“They would have been naturally reticent to challenge their employer after being unemployed for a long period of time,” Judge Burchardt said.

“Their underpayment is made all the more off-putting by the fact that during their employment Ms Mahomet received wage subsidy in respect of these employees in any event.”

Judge Burchardt said the underpayments in the latest case represented “a lot of money” for the two employees and found that Mahomet had shown no remorse, not apologised to the employees and taken “a long time” to rectify the underpayments. Mahomet back-paid the workers only after the Fair Work Ombudsman commenced legal action.

“She sought to place the blame for the underpayment of the employees on other agents and/or a lack of understanding on her part,” Judge Burchardt said.

“In circumstances where she had been through a process culminating in a court decision, this professed state of ignorance is really not one to which it is possible to give any credence.”

In addition to the penalty, Judge Burchardt ordered an injunction restraining Mahomet from underpaying childcare workers in future. The injunction means Mahomet could face contempt of court proceedings for any future contraventions proven in court.

Judge Burchardt also ordered Mahomet to notify the Fair Work Ombudsman if she employs someone subject to a traineeship or someone for which she receives a Commonwealth Wage Subsidy, opens any further Academy for Kids sites or acquires any new business interests that employ people.

Acting Fair Work Ombudsman Michael Campbell says the penalty sends a message that repeatedly underpaying employees is extremely serious conduct.

“It is shameful that an employer would exploit two vulnerable employees despite having been previously penalised for short-changing her staff,” Mr Campbell said.

“Any employer who ignores clear warnings to pay employees correctly is risking significant punishment.”

Mr Campbell says employers should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has now come into effect, increasing the maximum penalties for conduct including deliberate exploitation of workers.

“The maximum penalties available for some serious conduct that occurs today or in the future are now significantly higher than the penalties available to be imposed in matters such as our latest action against Mahomet, where the contravening conduct pre-dates the commencement of the Act,” he said.

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.

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) 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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