



## Labour hire business to face court for alleged unlawful unpaid work experience

NOTE (24/4/2019): Workforce Solutions (QLD) Pty Ltd has been placed into external administration and the proceedings against it have therefore been stayed. The Fair Work Ombudsman has discontinued its proceedings against Mr Mathew Micallef.

22 January 2018

A Brisbane labour hire business will face court for allegedly underpaying 10 employees more than \$14,000 through an unlawful unpaid work experience program.

The Fair Work Ombudsman has commenced litigation in the Federal Court against Workforce Solutions (QLD) Pty Ltd, based in Archerfield, and its general manager Mathew Micallef.

It is alleged that Workforce Solutions supplied 10 workers, including two aged 19 at the time, to perform between three and 26 days' work for three of its clients' businesses but paid the workers nothing on the basis that it was 'work experience'.

It is alleged that despite paying the workers nothing, Workforce Solutions charged its clients \$15 for each hour worked by each of the workers.

The Fair Work Ombudsman alleges the correct lawful classification of the workers was as employees meaning they were entitled to minimum hourly wage rates and entitlements under the relevant Modern Awards.

The 10 workers were allegedly entitled to have been paid a total of \$14,376, with the largest alleged individual underpayment being \$4,525.

The Fair Work Ombudsman investigated the matter after receiving requests for assistance from the workers.

It is alleged Workforce Solutions initially invited the workers to apply for paid jobs via website advertisements, then told them they had been unsuccessful due to an absence of industry experience or a job reference.

It is alleged Workforce Solutions then offered the workers the opportunity to gain experience and a reference through unpaid work.

It is alleged the 10 workers variously performed low-skilled manual work at three businesses in the warehousing and manufacturing sectors in Brisbane.

It is alleged that nine of the workers were underpaid for work performed in 2015, while one was allegedly underpaid for work performed last year.

Workforce Solutions has now rectified the alleged underpayments.

Fair Work Ombudsman Natalie James says a key factor in the decision to commence legal action was the need to deter employers from trying to profit by using unlawful unpaid work schemes as a source of free labour.

Ms James also says it is disappointing the alleged exploitation of one of the 10 workers occurred after the Fair Work Ombudsman had issued Workforce Solutions a contravention letter making it clear that its unpaid work experience program for the nine other employees was unlawful.

Workforce Solutions faces penalties of up to \$54,000 per contravention, while Mr Micallef faces penalties of up to \$10,800 per contravention.

The Fair Work Ombudsman is also seeking a Court Order for Workforce Solutions to complete a retrospective audit of entitlements owed to any worker involved in their work experience program since the start of 2015 and to rectify any underpayments identified.

Ms James says legitimate internship and work placements can be a genuine way for people to further their learning or gain skills that assist in finding employment.

"Unpaid placements or 'internships' are legitimate in certain cases – for example, where they are part of an approved program, such

as vocational placement related to a course of study,” she said.

“But the law prohibits the exploitation of workers by characterising them as ‘interns’ or as doing ‘work experience’ when they are fulfilling the role of an employee. Such workers must be paid minimum employee entitlements.”

The Fair Work Ombudsman has developed a range of resources – available at [www.fairwork.gov.au/unpaidwork](http://www.fairwork.gov.au/unpaidwork) (<http://www.fairwork.gov.au/unpaidwork>) – for employers, employees and higher education institutions to promote a clear understanding in the community about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act.

They include fact sheets on topics including unpaid internships and work experience, unpaid trials, and vocational (student) placements. There is industry-specific information for the print and broadcast media, professional services, hair and beauty and hospitality sectors. The unpaid work research report commissioned by the FWO is also available.

“With the range of resources available for employers, there is no excuse for mistakes or ignorance about their obligations to pay workers,” Ms James said.

Last year, the Fair Work Ombudsman [began court action](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20170601-her-fashion-box-litigation) ([www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20170601-her-fashion-box-litigation](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20170601-her-fashion-box-litigation)) against a fashion industry start-up that appeared on the reality show ‘Shark Tank’ for allegedly running an unlawful unpaid internship program and underpaying three workers more than \$40,000.

In 2016, [Fair Work Ombudsman litigation](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160604-aimg-bq-penalty) ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160604-aimg-bq-penalty](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160604-aimg-bq-penalty)) resulted in the Federal Circuit Court imposing \$272,850 in penalties against Sydney-based media company AIMG BQ Pty Ltd to send a “serious message” not to disguise employment relationships as unpaid internships.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) ([http://twitter.com/fairwork\\_gov\\_au](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au) (<http://www.facebook.com/fairwork.gov.au>).

Media inquiries:

Mark Lee, Director of Media,  
Mobile: 0408 547 381  
[mark.lee@fwo.gov.au](mailto:mark.lee@fwo.gov.au) (<mailto:mark.lee@fwo.gov.au>)

Page reference No: 7962

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.