

More allegedly false Caltex franchisee wage records spark further legal action

24 January 2018

The Fair Work Ombudsman has commenced another legal action alleging its attempt to audit a Caltex outlet in Sydney was obstructed by the franchisee providing falsified wage records.

Facing the Federal Circuit Court are Mohammad Arif Rana and his family's company, Abdul Wahid and Sons Pty Ltd, which was formerly the franchisee of a number of Caltex service stations, including two outlets north-west of Sydney at Dural and Ermington.

The Fair Work Ombudsman investigated the outlets last year as part of a proactive compliance activity involving audits of 25 Caltex service stations nationally.

The activity was conducted in response to concerns about underpayments and other non-compliance issues within Caltex's network of franchisee-operated outlets.

The legal action comes after the Fair Work Ombudsman announced in December it had commenced legal action against the former franchisee of the Caltex Five Dock service station in inner-western Sydney for allegedly knowingly providing false records to the Fair Work Ombudsman during the compliance activity.

In the latest case, the Fair Work Ombudsman issued Abdul Wahid and Sons Pty Ltd with a Notice to Produce and Mr Rana and the company provided timesheets, payroll records and pay slips purporting to show the hours worked and wage rates for 15 employees at the Dural and Ermington service stations.

It is alleged the Fair Work Ombudsman discovered that the time and wage records provided could not be correct because the company had been knowingly using its payroll software in a manner that produced false records.

The Fair Work Ombudsman alleges that Mr Rana and Abdul Wahid and Sons Pty Ltd knowingly provided the Fair Work Ombudsman with false and misleading records.

It is alleged that Mr Rana and the company also contravened laws requiring employers to issue employees with accurate pay slips within one day of pay day.

The absence of accurate time-and-wages records prevented the Fair Work Ombudsman from completing a full audit to determine whether employees at the Dural and Ermington outlets had been paid their full lawful entitlements.

Fair Work Ombudsman Natalie James says the legal actions have been commenced because allegedly providing false information that frustrates attempts to check whether vulnerable employees have been paid correctly is very serious conduct.

For the false records matters, Mr Rana faces maximum penalties of up to \$3600 per contravention and Abdul Wahid and Sons Pty Ltd faces penalties of up to \$18,000 per contravention. For the pay slips matter, maximum penalties of up to \$5400 per contravention for Mr Rana and \$27,000 per contravention for the company apply.

A directions hearing is listed in the Federal Circuit Court in Sydney on February 7, 2018.

Ms James says any unscrupulous employer tempted to try to frustrate a Fair Work Ombudsman time-and-wages audit by using false records should take note that the recent commencement of the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 means that they can now face prosecution in criminal courts.

"Before the commencement of the new Act, there were indemnities attached to evidence we gathered via Notices to Produce, which prevented the evidence from being used in criminal cases," she said.

"This meant that even when we had evidence demonstrating that criminal conduct had occurred, it was not admissible in criminal proceedings and therefore could not be the subject of criminal prosecution."

"But that loophole has now been closed and we are prepared to refer the most serious matters involving employers deliberately providing us with false records to the Commonwealth Director of Public Prosecutions for criminal prosecution."

The maximum penalty associated with the crime of knowingly providing false documents to a Commonwealth official under section 137.1 of the Criminal Code is 12 months imprisonment.

Ms James says employers should also be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has also increased the maximum penalties available when legal action is taken in civil jurisdictions for conduct including deliberate exploitation of workers and false records.

“The maximum penalties available in the civil courts 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 this one, where the allegedly contravening conduct pre-dates the commencement of the Act,” she said.

The Fair Work Ombudsman’s investigation relating to the Caltex network remains ongoing.

Employers and employees can visit www.fairwork.gov.au (<http://www.fairwork.gov.au>) or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace.

Small business operators can opt to receive priority service and a free interpreter service is available on 13 14 50.

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.

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.

The Fair Work Ombudsman recently launched its popular Anonymous Report function 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>)

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](http://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@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>).

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases).

Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

matthew.raggatt@fwo.gov.au (<mailto:matthew.raggatt@fwo.gov.au>)

Page reference No: 7967

Contact us

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

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.