

## Gold Coast security operator penalised \$115,668

24 July 2018

The Fair Work Ombudsman has secured a \$115,668 penalty against Gold Coast security company owner Adam Marcinkowski after he admitted taking unlawful adverse action against a guard by dismissing him. He also underpaid three other guards a total of \$15,938 between April 2015 and June 2016.

Mr Marcinkowski formerly operated a security business through his company, VIP Security Services Pty Ltd, which was contracted to provide security services at a range of Gold Coast City Council sites, including three libraries, for two years from April 2015.

Fair Work Ombudsman inspectors visited some of the sites in 2016 to check security staff were being paid their minimum lawful entitlements as part of an Inquiry into examining local government processes for procuring security services.

After the visits, Marcinkowski and VIP Security dismissed one full-time employee because he queried the hours he had been rostered to work. This dismissal breached the Fair Work Act, which makes it unlawful to take adverse action against an employee for making a complaint or enquiry in relation to their employment.

The underpayment breaches were the result of Mr Marcinkowski and VIP Security paying guards a flat \$24 hourly rate that failed to cover the weekend, night and public holiday rates employees were entitled to under the Security Services Industry Award 2010. Overtime and annual leave entitlements were also underpaid.

Mr Marcinkowski and VIP Security also breached workplace laws by making unlawful deductions from wages for uniforms, and by failing to ensure two employees on Individual Flexibility Agreements were better off than under the Award. The three underpaid guards have been back-paid in full.

Fair Work Ombudsman Sandra Parker said that Mr Marcinkowski's penalty is the fourth largest secured against an individual business operator as a result of Fair Work Ombudsman legal action.

"The Fair Work Ombudsman will not hesitate to take court action against employers who clearly disregard their workers' rights," Ms Parker said.

"This penalty highlights that it is completely unacceptable for an employer to dismiss a worker for exercising a basic workplace right."

"Employers in the security industry should be on notice that we will not tolerate businesses paying flat rates that undercut lawful minimum rates," Ms Parker said.

Judge Michael Jarrett found that Mr Marcinkowski's conduct was "indicative of systemic behaviour which suggests not only an utter disregard for the law, but also a lack of consideration for basic entitlements, workplace rights and decency".

Judge Jarrett described the adverse action conduct as the most concerning breach in the matter, finding that it was "deliberate and reprehensible".

Judge Jarrett found that Mr Marcinkowski had deliberately underpaid the workers: "He plainly knew the relevant rates at the time he employed each of the employees but deliberately caused (his company) not to pay them, but an insufficient flat rate instead".

The Court also ordered Mr Marcinkowski and VIP Security to commission an external audit of compliance during the period the company was contracted by the Gold Coast City Council and evidence of the back-payment of any underpayments found; and to circulate a workplace notice detailing workers' rights to all employees.

A penalty could not be imposed against VIP Security Services Pty Ltd because Mr Marcinkowski caused it to be placed into liquidation in April. Mr Marcinkowski is now the sole director of new company, VIP Securities International Pty Ltd, which employs some of the same staff VIP Security Services Pty Ltd had employed.

The Fair Work Ombudsman is preparing to refer the matter to the Australian Securities and Investments Commission, which regulates compliance with corporations law.

A report on the FWO's Inquiry into local government procurement of security services is available at: [Fair Work Ombudsman to work with local councils to improve management of security supply chains media release \(www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180625-igpi-report\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180625-igpi-report) .

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