

\$130,000 penalties after nail salon engages in “elaborate sham” to hide exploitation

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The Fair Work Ombudsman has secured a total of \$130,000 in penalties against the operators of an Adelaide nail salon for exploiting two young, migrant workers and creating false records as part of an “elaborate sham” to try to cover it up.

Adelaide man Minh Gia Le, who previously operated a nail salon in the Colonnades Shopping Centre at Noarlunga Centre, has been penalised \$30,000 and his company House of Polish Central Pty Ltd, which currently operates the salon, has been penalised a further \$100,000, in the Federal Circuit Court.

The penalties are the result of legal action by the Fair Work Ombudsman.

The nail salon has at various times traded as Global Nail and Beauty and/or House of Polish Central.

Le and his company admitted underpaying two nail technicians at the salon a total of \$53,021 between November 2014 and March 2016.

The employees, aged as young as 20 and 21 at the time, were both Filipino migrants.

Fair Work inspectors investigated after one of the employees lodged a request for assistance.

Inspectors found that the employees were paid as little as \$12 an hour, despite being entitled to \$18.97 to \$19.44 for normal hours and penalty rates ranging from \$23.71 to \$38.88 for weekend work under the Hair and Beauty Industry Award 2010 at the time.

The employees were underpaid \$35,680 and \$17,339 respectively. They were back-paid in full in late 2016.

Judge Stewart Brown rejected Le's claim that he had incorrectly believed that the employees could be paid as apprentices.

Judge Brown said Le must have been aware of his responsibilities as the Fair Work Ombudsman had drawn his attention to his obligations under the Award.

The Fair Work Ombudsman issued Le a Letter of Caution in 2015 after a proactive audit of his salon found that an employee had allegedly been underpaid more than \$2800.

“[I]n my view, this offending was not inadvertent, particularly given the previous involvement of the FWO with the business,” Judge Brown said.

“As such, in my view, I am required to give significant credence to the FWO's submission that both Mr Le and the company elected to take ‘a risk and place their own financial interests ahead of compliance with the law’.”

Judge Brown said the underpayment was a “very significant sum” which represented between 30 and 45 per cent of the entitlements of the two workers, who were vulnerable as they came from a non-English speaking background.

Le and his company also breached workplace laws by knowingly providing inspectors with false and misleading records during their investigation. Le also breached pay slip laws.

Le claimed in Court that his business had lost some records following a “cyber-attack” and that he had recreated records in an effort to assist the Fair Work Ombudsman and provide a response to Notice to Produce issued by inspectors.

However, Judge Brown found that the false records Le created in response to the Notices were “an elaborate sham” which “grossly favoured him” by significantly understating the hours the employees had worked, creating an appearance that they had been paid much higher rates than was actually the case.

“I have reached the conclusion that the reconstruction was deliberately and deceitfully motivated,” Judge Brown said.

“Mr Le's intent was, more likely than not to deceive [the Fair Work inspector] on the basis that he considered it highly improbable that he could be found out.”

Time records kept by the employees were important in establishing the underpayments, Judge Brown said.

In addition to the penalties, Judge Brown ordered Le to register with the My Account service at www.fairwork.gov.au and complete

the employer courses in the Online Learning Centre.

Fair Work Ombudsman Natalie James said the outcome of the matter sends a message that deliberate exploitation of migrant workers and falsification of records are serious contraventions with significant consequences.

“The Fair Work Ombudsman had no hesitation in taking this matter to Court given the blatant exploitation and deceitful way in which employers engaged with Fair Work inspectors,” Ms James said.

“There is a group of employers in Australia who still need to get the message that it is not OK to pay migrant workers a ‘going rate’ that undercuts lawful minimum pay rates.

“This case reinforces what all reputable business operators know: the lawful obligations to pay minimum rates apply to all employees in Australia, including migrant workers, and they are not negotiable.”

Ms James says business operators should also be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has introduced significantly higher penalties for a range of contraventions, including producing false records.

“Any employer who thinks they can get away with providing Fair Work inspectors false records or second-rate, made-up excuses about their record-keeping failings should think again,” Ms James said.

“A reverse onus of proof can also now apply, meaning that employers who don’t meet record-keeping or pay slip obligations and can’t give a reasonable excuse will need to disprove allegations of underpayments made in a court.”

Penalties of up to \$630,000 per contravention for a company and \$126,000 per contravention for an individual now also apply in relation to matters that involve serious breaches of workplace laws.

“Financial penalties for failing to keep records and issue pay slips have also significantly increased and unscrupulous employers that attempt to frustrate a Fair Work Ombudsman time-and-wages investigation by using false records can now face prosecution in criminal courts,” Ms James said.

The new sanctions apply to conduct that has occurred since the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 came into effect in September 2017.

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

Information on the website can be translated into 40 languages, complementing a suite of professionally translated resources available at www.fairwork.gov.au/languages (<http://www.fairwork.gov.au/languages>) .

The Fair Work Ombudsman’s [Pay and Conditions Tool \(PACT\)](http://calculate.fairwork.gov.au/) (<http://calculate.fairwork.gov.au/>) provides advice about pay, shift, leave and redundancy entitlements.

Employers and employees can also sign up to remain informed and receive tailored information by registering for a free Fair Work Ombudsman [My Account](https://www.fairwork.gov.au/my-account/registerpage.aspx?utm_source=webchat&utm_medium=SB-My-acct-sign-up&utm_campaign=MyaccountLP) (https://www.fairwork.gov.au/my-account/registerpage.aspx?utm_source=webchat&utm_medium=SB-My-acct-sign-up&utm_campaign=MyaccountLP) .

The Fair Work Ombudsman’s popular [Anonymous Report](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool) function (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool>) , available in 16 languages other than English, allows visa-holders to report workplace concerns anonymously to the agency in their own language.

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>) .

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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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