

More than \$100k in penalties after Brisbane massage parlour refuses to back-pay two workers \$12,842

20 June 2018

The Fair Work Ombudsman has secured more than \$100,000 in penalties against the former operators of two massage parlours in the Brisbane CBD after they refused to back-pay two workers who had been underpaid less than \$13,000.

Bishnu Laxmi Ganesha Trading Pty Ltd, which formerly operated the 'Brisbane City Thai Massage and Day Spa' and 'Heavenly Asian Massage' parlours, has been penalised \$97,000 in the Federal Circuit Court.

In addition, the former company owners Sean Pinnell and Sajana Paudel have been penalised \$4625 and \$10,600 respectively.

Judge Salvatore Vasta imposed the penalties after Pinnell, Paudel and their company admitted contravening workplace laws by failing to comply with a Compliance Notice issued by the Fair Work Ombudsman requiring them to back-pay two massage therapists a total of \$12,842 in outstanding wages and entitlements.

Judge Vasta also ordered the company to back-pay the employees in full. They have been back-paid less than half their entitlements to date.

Bishnu Laxmi Ganesha Trading business manager Binaya Sapkota has also been penalised \$8000 for his involvement in contraventions of record-keeping and pay slip laws and in the failure to provide the employees with a Fair Work Information Statement at the commencement of their employment.

The total \$120,225 in penalties are the result of legal action by the Fair Work Ombudsman.

Fair Work Ombudsman inspectors investigated after two employees requested assistance.

Both employees were Japanese women aged in their mid-20s who were in Australia on 417 working holiday visas.

Inspectors found that the employees had been underpaid over a three-month period in 2016.

The employees had been paid on a per-massage basis for most of their employment, but were entitled to the minimum hourly rates and entitlements under the Hair and Beauty Industry Award.

An inspector issued a Compliance Notice requiring Bishnu Laxmi Ganesha Trading to back-pay the workers, but the company, Pinnell and Paudel failed to comply with the Notice.

Under the Fair Work Act, business operators must adhere to Compliance Notices, unless they have a reasonable excuse, or make a Court application for a review if they are seeking to challenge a Notice.

Judge Vasta found that Pinnell had responded to receiving the Compliance Notice by sending the Fair Work Ombudsman an email saying that he would "be seeking some legal advice about these 'ridiculous charges'," before later claiming he had no money to pay the Compliance Notice.

Judge Vasta said Pinnell had told the inspector that the inspector "did not understand the concept of drawing blood from a stone".

Judge Vasta took issue with a submission from Pinnell's solicitor that failing to comply with the Compliance Notice was not a serious breach.

"What has to be said about that is two things; firstly, the money is not insignificant," Judge Vasta said. "If it were so insignificant then there should have been no trouble at all for the company and for the directors to have been able to pay that money when it was asked for."

Judge Vasta said the two employees were paid only 39 and 41 per cent, respectively, of what they were entitled to.

Judge Vasta said this meant the company "was saving itself, on average, 60 per cent of what it should have been paying to what it did actually pay".

"In other words, it was giving itself a huge advantage over its competitors," Judge Vasta said.

"It also needs to be borne in mind that these two employees were vulnerable, having come here to the country on working visas.

They are entitled to be protected under Australian workplace law and to not be taken advantage of in the way they have been by this company.

“That amount of money, for which they were underpaid, would be extremely sizable to those particular employees. Therefore, I cannot agree with any submission that attempts to minimise the conduct of the company.”

Judge Vasta also ordered Pinnell, Paudel and Sapkota to register with the My Account service at www.fairwork.gov.au and complete the courses for employers in the Online Learning Centre.

Fair Work Ombudsman Natalie James says the penalties imposed send a message that there will be serious ramifications for employers that thumb their nose at the law by refusing to back-pay workers who have been short-changed.

“This employer’s refusal to comply with the Compliance Notice and resolve this matter outside of the courts was clearly a very poor decision,” Ms James said.

“Any employer that thinks they can exploit vulnerable employees with impunity should think again.

“We know overseas workers can be particularly vulnerable in the workplace and we take very seriously any allegations relating to the exploitation of overseas workers.”

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.

Penalties of up to \$630,000 per contravention for a company and \$126,000 per contravention for an individual now apply in relation to some serious contraventions.

The new laws and penalties 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) (<https://www.fairwork.gov.au/my-account/registerpage.aspx>) .

The Fair Work Ombudsman’s popular [Anonymous Report function](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool) (<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.

Ms James says visa-holders should also be aware that in line with an agreement between the Fair Work Ombudsman and the Department of Home Affairs, they can seek assistance from the Fair Work Ombudsman without fear of their visa being cancelled. More information is at our [Visa holders and migrants page](http://www.fairwork.gov.au/find-help-for/visa-holders-and-migrants) (www.fairwork.gov.au/find-help-for/visa-holders-and-migrants) .

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Media inquiries:

Ryan Pedler, Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

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Fair Work Online: www.fairwork.gov.au

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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

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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