

Almost \$100k in penalties after Caltex franchisee falsified wage records

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Penalties of almost \$100,000 against a former Caltex franchisee in Sydney for falsifying wage records send a message that serious consequences apply when fabricated records frustrate investigations, according to Fair Work Ombudsman Natalie James.

Peter Dagher and his company Aulion Pty Ltd, who formerly operated the Caltex Five Dock service station in inner-western Sydney, have been penalised \$16,038 and \$80,190 respectively after admitting falsifying records of the wage rates paid to migrant workers.

The penalties, which are 90 per cent of the possible maximums, are the result of legal action by the Fair Work Ombudsman in the Federal Circuit Court.

The penalties are also the highest the Fair Work Ombudsman has secured in a legal action relating solely to record-keeping and pay slip breaches.

Ms James says the fact that Courts are demonstrating they are prepared to issue near maximum penalties for serious record-keeping contraventions serves as a major warning, given that new laws have now significantly increased sanctions for serious record-keeping breaches.

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.

“The breaches by this Caltex franchisee occurred in 2016 – but if this same conduct occurred today, the possible sanctions available in Court would be even more significant,” Ms James warned.

“Financial penalties for failing to keep records and issue pay slips have significantly increased and any unscrupulous employer that frustrates a Fair Work Ombudsman time-and-wages investigation by using false records can now face prosecution in criminal court.

“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.”

The Fair Work Ombudsman investigated the Five Dock outlet in 2016 as part of a self-initiated 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 Fair Work Ombudsman issued Aulion Pty Ltd with Notices to Produce and Dagher and the company provided a range of documents, including contracts of employment, time-and-wages records, pay slips and earnings summaries for six employees.

All six of the employees were migrants to Australia, and all but one were international students.

Concerned that the documents provided did not accurately reflect the wage rates the company had paid to employees, last year the Fair Work Ombudsman issued further Notices to Produce to a bank, a superannuation fund and Aulion’s accountant.

The information contained in the documents obtained through the further Notices to Produce was inconsistent with information that had been provided by Dagher and his company.

In Court, Dagher and his company admitted that the reason for the inconsistency was that they had falsified documents and records, and unlawfully made use of the documents and records by providing them to the Fair Work Ombudsman.

Dagher and his company also breached laws requiring employers to issue employees with accurate pay slips within one day of payday.

The absence of accurate time-and-wages records prevented the Fair Work Ombudsman from completing a full audit to determine whether allegations that workers at the Caltex Five Dock service station were being paid as little as \$12 an hour were correct.

The Fair Work Ombudsman’s compliance activity focused on Caltex in 2016 also resulted in the Agency commencing 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 in that matter 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 matter is still before the court.

The Fair Work Ombudsman issued a public report on the proactive compliance activity in March, detailing significant compliance problems among Caltex's network of franchisee-operated outlets, including serious record-keeping deficiencies that prevented an assessment of the true extent of underpayments.

Ms James today reiterated the Agency's call for Caltex to take steps to ensure the Australian community can be confident Caltex is operating openly and with full accountability.

"It is incumbent on Caltex to take steps to clean up its business, taking into account the shocking levels of non-compliance identified in FWO's report, including underpayments and serious record-keeping deficiencies, and the profile of the workers and businesses in its network," Ms James said.

Ms James said new laws that enable franchisors to be held responsible for contraventions by a franchisee, in some circumstances, mean that it is now crucial for all franchisors to take reasonable steps to stop non-compliance with work laws in their networks.

Employers and employees can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. Small business callers can opt to receive priority service via the Small Business Helpline and a free interpreter service is available on 13 14 50.

The Fair Work Ombudsman has also recently launched a Small Business Showcase - www.fairwork.gov.au/smallbizshowcase (www.fairwork.gov.au/smallbizshowcase) - which is a virtual hub providing a wealth of resources for small businesses seeking information about their workplace obligations.

Resources available include the Pay and Conditions Tool (PACT), which 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 last year released the 'Record My Hours' smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>), which uses geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

"We see far too many examples of records that are either deliberately misleading or sub-standard and the app is a valuable back-up for workers when employers have failed to meet their record-keeping obligations," Ms James said.

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

The Fair Work Ombudsman recently published an [open letter](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170925-international-students-release) (www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170925-international-students-release) to international students to encourage them to seek free help from the agency if they experience any issues while working in Australia.

"We are seeking to raise awareness among international students that in line with an agreement between the Fair Work Ombudsman and the Department of Immigration and Border Protection, you can seek our assistance without fear of your visa being cancelled, even if you've worked more hours than you should have under your visa," Ms James said.

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