

\$118,000 in penalties after NSW roadhouse operator “well and truly caught out by FWO”

23 May 2018

The Fair Work Ombudsman has secured \$118,440 in penalties in Court after a NSW roadhouse manager tried to deprive an Indian employee of her Government-funded parental leave pay by falsely claiming he provided the pay to the employee's husband.

NSW man Kulpreet Singh - the former manager and part-owner of the United Petroleum roadhouse at Marrangaroo, near Lithgow in NSW's Central West region – has been penalised \$19,720.

Noorpreet Pty Ltd, a company Mr Singh is a director of, has been penalised a further \$98,700.

The penalties, imposed in the Federal Circuit Court, are the result of the Fair Work Ombudsman's first legal action against an employer for failing to transfer Paid Parental Leave funds to an employee.

The affected employee worked as a chef at the roadhouse on a 487 skilled regional employer nomination visa. She is now an Australian citizen.

After the employee, then aged 29, had a child, the Department of Human Services (DHS) transferred \$11,538 to Noorpreet in April 2015 for the company to transfer to her.

The employee was entitled to the funds under the Government's Paid Parental Leave scheme.

After making several unsuccessful requests to Singh, the employee complained to the DHS that her employer had not paid her the funds.

The DHS was not able to resolve the matter and referred it to the Fair Work Ombudsman.

When the Fair Work Ombudsman investigated, Singh provided a Fair Work inspector with a false document purporting to show that he paid the parental leave funds in cash to the employee's husband in May 2015.

After the Fair Work Ombudsman challenged the veracity of the document and repeatedly demanded payment, Singh and Noorpreet eventually paid the parental leave funds to the employee in October 2015, more than five months after they were due.

In Court, Singh and Noorpreet admitted committing a contravention of the Paid Parental Leave Act 2010, as well as a number of contraventions of record-keeping and pay slip laws under the Fair Work Act.

The penalties imposed for the record-keeping contraventions were between 75 and 90 per cent of the possible maximums and the penalty for the paid parental leave contravention was 75 per cent of the possible maximum.

Judge Nick Nicholls said that Singh had engaged in a “deliberate deception”.

Judge Nicholls said Singh had tried to deceive and conceal the failure to pay the employee her parental leave pay, and had sought to deceive and mislead government agencies.

Judge Nicholls said Singh had “lied” and that the failure to transfer the parental leave pay was “an express and active intervention” to deprive the employee of her payments.

“Mr Singh was, to be blunt, well and truly caught out by the FWO, perpetrating a deliberate falsehood in relation to the false payment record,” Judge Nicholls said.

Judge Nicholls found that Singh had not displayed any true remorse and that some of the excuses he made for not paying the paid Parental Leave pay to the employee sooner were “absurd”.

In setting the penalty amounts, Judge Nicholls said the possibility of Singh's bankruptcy if the penalty is set at a high level “cannot weigh in Mr Singh's favour in relation to the assessment of deterrence. Even if this were to be a consequence of the penalty order, it is not a sufficient reason to not set the penalty at the otherwise ‘appropriate’ level.”

Judge Nicholls also said that it was important to set a penalty that signals disapproval of the conduct and serves as a general deterrent to others in the hospitality industry.

Fair Work Ombudsman Natalie James says withholding monies funded by Australian taxpayers from a vulnerable worker and telling blatant lies to the Fair Work Ombudsman is completely unacceptable conduct that deserves the strongest condemnation.

“New parents have enough on their minds without having to chase recalcitrant employers over their taxpayer funded paid parental leave,” Ms James said.

Ms James says the Court’s judgment also sends a message that serious consequences apply for any employers that contravene the law and deliberately mislead investigators.

Ms James says business operators should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has introduced higher penalties for a range of contraventions, including serious record-keeping breaches.

“Any employer thinking they can cover up breaches of work laws by creating false records or lying to Fair Work Inspectors – beware,” she said.

“There are new higher penalties for record-keeping breaches and the risk of criminal prosecution for this self-serving and fraudulent conduct.”

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

Maximum penalties for failing to keep employee records or issue pay slips have doubled to \$63,000 for a company and \$12,600 for an individual, and the maximum penalty for knowingly making or keeping false or misleading employee records has tripled to \$12,600 for an individual.

Any unscrupulous employer tempted to try to frustrate a Fair Work Ombudsman investigation by using false records can now face prosecution in criminal courts.

Employers and employees seeking assistance can visit www.fairwork.gov.au, where information is available in 40 languages, or call the Fair Work Infoline on 13 13 94. Small business callers can opt to receive priority service via the Small Business Helpline and an 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 (<http://www.fairwork.gov.au/smallbizshowcase>) - which is a virtual hub providing a wealth of resources for small business owners 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’s ‘Record My Hours’ smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>) is aimed at tackling the persistent problem of underpayment of vulnerable workers by using 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.

In recognition that some employees are reluctant to complain about their workplace issues, the Fair Work Ombudsman now has an “Anonymous Report” function to allow the community to [confidentially report potential workplace breaches](https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language) (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language>) in English and 16 other languages.

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