

## \$243,000 penalties for underpayments, false records

8 July 2019

The Fair Work Ombudsman has secured penalties of \$243,000 against the operators of several retail fruit and vegetable and flower stores across Melbourne for underpaying workers, non-compliant record keeping and falsifying employment records.

The Federal Circuit Court has ordered A & S Wholesale Fruit and Vegetables Pty Ltd, which trades as Parkmore Fruit and Vege Market and Melbourne MarketPlace, to pay \$200,000 in penalties.

Stephen Fanous, the director of the company, and its operations manager Etherah Louli, have also been ordered to pay \$30,000 and \$13,000 in penalties respectively. Mr Fanous was found to be involved in most of the company's contraventions, while Ms Louli was involved only in some of the record-keeping and pay slips breaches.

Between 2012 and 2014, the company underpaid three workers \$132,956 through the use of varying flat rates of pay of between \$10 and \$18.52 per hour. Two of the workers were employed at a retail fruit and vegetable business in the Chirnside Shopping Centre, while the other worked at retail florist businesses operated in shopping centres in Fountain Gate, Parkmore and Dandenong.

For two of the employees there was an 'off the books' and 'on the books' payment system for certain hours or periods of their employment.

Fair Work Ombudsman Sandra Parker said the significant penalties send a strong message to all employers that unlawfully low flat rates were unacceptable and would be detected.

"We have no tolerance for employers who think they can choose to pay workers a flat rate of pay that undercuts a worker's minimum entitlements, or who try to hide it with unlawful 'off the books' practices," Ms Parker said.

"Accurate and timely record-keeping is a fundamental obligation of any employer and whenever we find false records we will consider court action, with increased penalties now available."

All three workers were underpaid minimum entitlements under the General Retail Industry Award for ordinary hours, penalty rates and overtime.

One of the workers, employed at the Chirnside business, was underpaid for all the 130 hours per fortnight he worked on average, including being paid just \$10 per hour in cash for all hours after the first 76. The Court found that the employer had required this worker to work unreasonable additional hours due to the extensive hours worked on a weekly basis. The other worker at the Chirnside business, aged 16 when she began employment, was paid \$10 an hour for all hours worked.

The company rectified the underpayments in full following the commencement of court action.

Judge John O'Sullivan said the company and its senior managers' conduct was "serious", with the underpayments "substantial" and continuing across an extended period, while the record-keeping contraventions, the production of false or misleading records being the "gravest" of the contraventions, made determining the underpayment amounts difficult.

"The [company]'s failure to make proper records, keep[ing of] false employment records and failure to make timely provision of accurate pay slips to the employees, undermines the utility and fundamental objectives of the [Fair Work] Act," Judge O'Sullivan said.

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