

Melbourne dental operators penalised

25 October 2019

The former operators of a Melbourne dental practice have been penalised a total of \$73,000 for underpaying a visa holder tens of thousands of dollars, following legal action by the Fair Work Ombudsman.

Ari Masters and Christine Masters, who formerly operated and part-owned the No Brace Centre dental clinic in the Melbourne CBD, have been penalised \$55,000 and \$18,000, respectively, by the Federal Circuit Court.

The underpaid worker, from South Korea and aged in her late 20s at the time of her employment, was on an international student visa and later a 457 skilled worker visa when she was underpaid \$66,945 for work at the clinic as a laboratory technician.

In addition to the penalties, Mr and Mrs Masters have been ordered to pay compensation to the worker to cover the underpayment amount, plus interest.

The worker was paid a flat rate of \$15 an hour between April 2011 and February 2014 - but under the Health Professionals and Support Services Award at the time, she should have been paid \$16.90 to \$18.93 for ordinary hours and up to \$37.85 an hour for overtime.

Fair Work Ombudsman Sandra Parker said the matter demonstrates that FWO will not hesitate to take legal action in response to blatant breaches of migrant workers' rights.

"The Fair Work Ombudsman has been highlighting for many years that the use of low, flat rates that undercut lawful minimums is a clear breach of workplace laws. Any employer paying staff with flat rates lower than the relevant minimums faces enforcement action. Any employees with concerns about their pay should contact us," Ms Parker said.

The Fair Work Ombudsman discovered the underpayment contraventions when it investigated a request for assistance from the visa holder. Workplace laws relating to record keeping, pay slips, unauthorised deductions and payment of annual leave entitlements were also breached and a Notice to Produce records was not complied with.

Judge Anthony Kelly found that the underpayment – which equated to an average weekly underpayment of \$399 - had a significant impact on the worker, including requiring her to borrow money from her unemployed mother in Korea to meet living expenses and pay bills.

Judge Kelly found that Mr and Mrs Masters' conduct was serious, calculated and egregious, there had been a near complete lack of genuine remorse and that "the deliberateness of their contraventions should be reflected in the penalties".

"The imposition of meaningful penalties is necessary to send the appropriate message that there are serious consequences for failing to comply with the Act and to create an incentive for both the respondents and other employers to change their practices," Judge Kelly said.

It is the second time the Fair Work Ombudsman has secured penalties against Mr Masters. In the Federal Circuit Court in August this year (www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/august-2019/20190808-no-brace-penalty-media-release), Mr Masters was penalised \$5,355 and ordered to back-pay a former 457 visa holder \$32,889 plus interest after failing to comply with a Compliance Notice issued by a Fair Work Inspector.

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