

Sydney care facility operators penalised

17 February 2020

The Fair Work Ombudsman has secured penalties totalling \$41,580 against the operators of the Elizabeth Cottage respite and care facility in Peakhurst, Sydney, for deliberately underpaying two disability support workers \$84,450.

The Federal Circuit Court fined Lovely Care Pty Ltd \$36,000 and its director, secretary and shareholder Ms Elizabeth Bonilla \$5,580 for her involvement in Lovely Care's underpayment of the workers.

The employees, a man from Egypt and a woman from China, were recent migrants to Australia at the time they were underpaid. The woman from China spoke limited English.

They were paid flat rates of \$200 to \$312 for shifts of at least 15 hours. These amounts were insufficient to cover the employees' minimum hourly rates, casual loadings and a sleepover allowance under the Social and Community Services Employees (State) Award and the Social, Community, Home Care and Disability Services Industry Award 2010.

One employee was underpaid \$54,115 and the other was underpaid \$30,335.

The Fair Work Ombudsman discovered the alleged underpayments when it investigated complaints lodged by the employees.

The FWO commenced legal proceeding in 2013 against Lovely Care Pty Ltd and Ms Bonilla alleging both breached the Workplace Relations Act 1996 (Cth), Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 and Fair Work Act 2009.

In November 2015, Lovely Care, shortly before a trial was due to commence, admitted all the alleged contraventions and rectified the underpayments with interest. However, Ms Bonilla denied involvement in the contraventions.

In January 2019, the Federal Circuit Court found Ms Bonilla was involved in some of the contraventions, including that she had knowledge of the employees' casual employment, the hours they worked, and Lovely Care's failure to pay the full minimum ordinary time entitlements, casual loadings and other allowances.

Fair Work Ombudsman Sandra Parker said the penalties imposed by the Court reflected the deliberate nature of Lovely Care's and Ms Bonilla's conduct.

"Migrant workers are some of the most vulnerable to underpayments in the community as they often have a limited understanding of workplace laws. Unfortunately some employers take advantage of this by paying them unlawfully low rates," Ms Parker said.

"This judgement should serve as a warning to employers who would exploit migrant workers that they will get caught and face significant consequences for their actions."

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.

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases).

Media inquiries:

Michael Anderson, Assistant Media Director

Mobile: 0409 120 830

michael.anderson@fwo.gov.au (<mailto:michael.anderson@fwo.gov.au>)

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.