

Activ Foundation signs Court-Enforceable Undertaking

20 March 2020

Disability services provider, Activ Foundation Inc. (Activ) will back-pay employees in Western Australia a total of \$13.6 million after breaching Australia's workplace laws.

Activ, which is a registered Australian Disability Enterprise, has entered into a Court-Enforceable Undertaking with the Fair Work Ombudsman after self-disclosing that it underpaid 1,695 current and former employees, in diverse roles such as manufacturing, property maintenance, landscaping and product packaging.

The affected workers were all people with a disability and were covered by a pay structure set out in the Supported Employment Services Award 2010 that allows employees to receive a rate of pay based on their capacity to perform the work.

The significant underpayments occurred between December 2011 and December 2017 and were identified after the company discovered that changes it made to broaden the application of the tool used to determine its employees' rate of pay, contravened the Award.

Activ has already back paid \$12.7 million to 1313 workers, which includes interest and superannuation. Back payments have ranged from \$5 to \$51,152.

The remaining \$907,830 needs to be back paid to 382 employees within 90 days.

Fair Work Ombudsman Sandra Parker said that a Court-Enforceable Undertaking was appropriate, as the organisation had demonstrated a strong commitment to back-paying workers and setting up new measures to support their staff.

"The Court-Enforceable Undertaking commits Activ to stringent measures to protect their employees, including funding three external audits over the next three years and setting up a clear process for workers or their representatives to dispute their rate of pay," Ms Parker said.

"This matter serves as a warning to all organisations that if you don't prioritise workplace compliance, you risk underpaying staff on a large scale and face a massive back-payment bill. Any employers with questions about their lawful workplace obligations should contact us."

Under the court-Enforceable Undertaking, Activ must set up a dedicated hotline for employees and hire a specialist to audit Activ's compliance with Commonwealth workplace laws.

Activ must also liaise with relevant government bodies to ensure that the back payments do not impact adversely on social security payments.

Activ is required to display public, workplace and online notices detailing its breaches and apologising to workers and register with the My account portal and pay for workplace relations training for payroll and human resources staff.

Activ will also make a contrition payment, providing a total of \$20,000 to two WA-based disability organisations.

Employers and employees can contact fairwork.gov.au and 13 13 94 for free workplace advice.

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Download the [Activ Foundation Enforceable Undertaking \(PDF 2.7MB\)](https://www.fairwork.gov.au/ArticleDocuments/1505/activ-foundation-enforceable-undertaking.pdf.aspx) (<https://www.fairwork.gov.au/ArticleDocuments/1505/activ-foundation-enforceable-undertaking.pdf.aspx>) ([DOCX 137.9KB](https://www.fairwork.gov.au/ArticleDocuments/1505/activ-foundation-enforceable-undertaking.docx.aspx)) (<https://www.fairwork.gov.au/ArticleDocuments/1505/activ-foundation-enforceable-undertaking.docx.aspx>)

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