

Café operator in court

2 November 2020

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operator of a café offering take away services in western Victoria.

Facing court is Mr Peter Thulborn who the FWO alleges operates the Mortlake Deli Fresh Café, in Mortlake.

The regulator investigated after receiving a request for assistance from a worker at the café.

A Fair Work Inspector issued a Compliance Notice to Mr Thulborn in March this year after forming a belief Mr Thulborn had failed to pay the employee correctly for work she had performed between July 2018 and November 2019.

The inspector believed the employee had been underpaid her minimum wages, annual leave entitlements and penalty rates for public holiday, early morning and weekend work under the Fast Food Industry Award 2010.

The FWO alleges Mr Thulborn, without reasonable excuse, failed to comply with the Compliance Notice which required him to calculate and back-pay the worker's entitlements.

In line with the FWO's proportionate approach to regulation during the COVID-19 pandemic, the FWO made attempted to contact Mr Thulborn and secure voluntary compliance before commencing legal action.

The FWO also alleges that Mr Thulborn breached workplace laws by issuing pay slips to the employee that did not contain the required content.

Fair Work Ombudsman Sandra Parker said the regulator would continue to enforce workplace laws and take businesses to court where lawful requests are not complied with.

Under the Fair Work Act, Compliance Notices are important tools used by inspectors if they form a belief that an employer has breached workplace laws."

Where employers do not comply with our requests, we will take appropriate action to protect employees. A court can order the business to pay penalties in addition to back-paying workers," Ms Parker said. "Any employees with concerns about their pay or entitlements should contact the Fair Work Ombudsman for free assistance."

The FWO is seeking penalties against Mr Thulborn and a court order to comply with the Compliance Notice, including rectifying any underpayments, plus superannuation and interest.

Mr Thulborn faces a maximum penalty of \$6,300 for the alleged Compliance Notice breach and maximum penalty of \$12,600 for the alleged pay slip breach. A directions hearing has been listed in the Federal Circuit Court in Melbourne on 11 November 2020.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace. A free interpreter service is available on 13 14 50.

Follow the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (http://www.facebook.com/fairwork.gov.au) .

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:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@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.