

WHSmith signs Enforceable Undertaking

5 November 2020

National food and retail company WHSmith Australia Pty Ltd has back-paid employees more than \$2.2 million and entered into an Enforceable Undertaking (EU) with the Fair Work Ombudsman.

The company, which is owned by UK company WHSmith PLC, self-reported to the regulator that it had underpaid employees after failing to provide employees with all entitlements they were owed under the General Retail Industry Award 2010 and Fast Food Industry Award 2010.

WHSmith operates newsagency/bookstore and fast food/café stores under brands including WHSmith, Fresh+, Wild Gifts & Cards, Supanews, Gadgetshop, Zoodle, Longshot, and Immotion. The stores are primarily located at high traffic areas in airports, train stations and hospitals.

The company identified the underpayments during an internal audit. The underpaid workers performed various roles including stock control, customer service, food preparation and store management in retail and fast food sites located across Victoria, NSW, Queensland, WA, South Australia and the ACT.

The most significant underpayments relate to a failure to pay full overtime entitlements for part-time employees and salaried store managers.

Other entitlements underpaid included a penalty rate payable when employees had less than 12 hours between shifts, annual leave entitlements and a special clothing allowance. Record-keeping laws were also breached.

As at 1 October this year, WHSmith had identified and back-paid 1,511 current and former employees a total of \$2.2 million, which includes interest and superannuation, for underpayments that occurred between 2013 and 2019. Individual back-payments range from \$1 to over \$117,000.

The EU requires WHSmith to compensate the remaining former employees that could not be located at the time of payment within the next four months.

Fair Work Ombudsman Sandra Parker said that an EU was appropriate as WHSmith had cooperated with the investigation and demonstrated a strong commitment to rectifying all underpayments.

“Under the Enforceable Undertaking, WHSmith has committed to implementing stringent measures to improve compliance and protect the rights of its workforce. This includes engaging, at its own cost, an expert auditing firm to assess the outcomes of its rectification program and audit its compliance with workplace laws over the next three years,” Ms Parker said.

“This matter serves as a warning to all employers that if you don’t prioritise workplace compliance, you risk underpaying staff on a large scale. Any employers who need help meeting their lawful workplace obligations should contact the Fair Work Ombudsman for free advice.”

The company must also make a \$50,000 contrition payment to the Commonwealth’s Consolidated Revenue Fund within the next two months, under the EU. FWO reduced the size of the contrition payment that would ordinarily have been required due to the significant impact of the COVID-19 pandemic on WHSmith Australia’s business.

WHSmith is also required to display public, workplace and online notices detailing its workplace law breaches, apologise to workers, commission workplace relations training for managerial staff, operate a Hotline for the next 12 months for employees and provide evidence to FWO that it has developed systems and processes for ensuring compliance in future.

Employers and employees can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94 for free workplace advice. A free interpreter service is available on 13 14 50.

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