

Dusk signs Enforceable Undertaking

29 January 2021

National retail company Dusk Australasia Pty Ltd is back-paying employees more than \$2.3 million after entering into an Enforceable Undertaking (EU) with the Fair Work Ombudsman.

The company, which operates more than 100 retail outlets across Australia selling candles and other products, self-reported underpayments to the regulator in June 2020.

After being prompted by queries from employees, Dusk became aware that it had underpaid an entitlement that was payable under the General Retail Award 2010 when employees had a break of less than 12 hours between shifts.

The error led to Dusk underpaying employees across all states and territories. The underpaid workers were primarily customer service staff, assistant store managers and store managers.

As at 21 December 2020, Dusk has identified and commenced back-paying more than 1500 current and former employees approximately \$2.3 million for underpayments that occurred between 2013 and 2019. Individual back-payments range from \$4 to over \$26,000. In addition, Dusk is also paying employees interest and superannuation in relation to the underpayments.

The EU requires Dusk to have compensated all employees by 22 February 2021.

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

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

“This matter demonstrates how important it is for employers to place a high priority on ensuring they are aware of every lawful entitlement they must pay their employees. The underpayment of just a single entitlement can result in a large-scale back-payment bill. Any employers who need help meeting their workplace obligations should contact the FWO for free advice and assistance.”

Under the EU, Dusk must make a \$45,000 contrition payment to the Commonwealth’s Consolidated Revenue Fund. Dusk’s co-operation in rectifying the breaches of one award provision and its steps to ensure future compliance were relevant factors in determining the contrition payment.

Dusk is also required to display media, social media and online notices detailing its workplace law breaches, apologise to workers, commission workplace relations training for managerial staff, commission an independent organisation to operate a Hotline for 12 months for employees and provide evidence 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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