

## Former operators of Mount Gambier health and fitness club fined \$145,000

7 April 2010

Simdo Pty Ltd, which formerly traded as Tonic Health, on Keegan Street, has been fined \$120,000.

Simdo's former sole director Donna Creek, who was the primary manager of Tonic Health at the time of the underpayments, has been fined a further \$25,000.

Industrial Magistrate Michael Ardlie imposed the penalties in the Industrial Relations Court of South Australia following a prosecution by the Fair Work Ombudsman.

The six workers - employed to perform fitness instructing, reception and playroom duties - were underpaid a total of \$21,728 between March, 2006 and February, 2008.

The workers were underpaid their minimum hourly rate, annual leave entitlements, minimum shift pay, superannuation and penalty rates for Sunday, public holiday and overtime work.

Creek also admitted contraventions relating to a failure to keep proper time-and-wages records, failing to issue payslips and failing to pay employees frequently enough.

Handing down his decision, Industrial Magistrate Ardlie said Creek and Simdo had "exhibited a blatant disregard for their obligations and employees' welfare" by continuing to operate Tonic Health when it was clear employees could not be paid.

"The failure to make payment of wages and superannuation contributions can only be regarded as deliberate," he says in his judgment.

"Simdo should have ceased trading when it realised it could not pay its employees instead of allowing them to continue to perform work and not pay them or incorrectly pay them."

Industrial Magistrate Ardlie has also ordered Simdo to rectify the underpayments of the six former employees.

Simdo sold Tonic Health in February, 2008. The Fair Work Ombudsman received complaints from workers a short time later and started an investigation.

The underpaid employees were all women aged 18 to 35, included a trainee.

Fair Work Ombudsman South Australian Director Carey Trundle says the court penalty reinforces the message to employers that underpaying employees is a serious matter and they need to ensure they are paying staff their lawful entitlements.

"We will not hesitate to pursue companies and individuals who show blatant disregard for their employees' workplace rights," Ms Trundle said.

The Fair Work Ombudsman promotes harmonious, productive and co-operative workplaces. It also monitors compliance and investigates breaches of national workplace laws.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit [www.fwo.gov.au](http://www.fwo.gov.au). For translations call 13 14 50.

Media inquiries:

Craig Bildstien, Director Media & Stakeholder Relations,  
0419 818 484  
[craig.bildstien@fwo.gov.au](mailto:craig.bildstien@fwo.gov.au)

Ryan Pedler, Media & Stakeholder Relations Senior Adviser  
(03) 9954 2561, 0434 365 924  
[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au)

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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.