

Do the Right Thing

First published on 29 October in the Geelong Advertiser

The recent Geelong Show provided a good opportunity for the Fair Work Ombudsman to talk to people from the Barwon region about their workplace rights and responsibilities.

We sent a team of advisers to speak to show-goers about their experiences, because we take our job of educating people - and raising awareness of workplace issues - very seriously.

It is interesting to review some of the excuses we heard about why some employers are not necessarily meeting all of their lawful obligations...like "we don't have time to provide pay slips" or "opening and closing the business is part of the job, and you don't get paid for it!"

I have to say that in the main, our experience is that most businesses try to do the right thing by their staff, but obviously we do come across some that take short-cuts because they simply haven't bothered to access the information they need to make the right decisions.

At the Fair Work Ombudsman, we want to reduce the amount of guesswork that goes on and assist employers to understand and comply with their basic responsibilities. So I've compiled a list of some of the most common excuses we hear from employers about how they pay their staff - and our response:

THEY SAY: That's all they're worth

WE SAY: It's wrong to make this kind of judgement. Fair Work Australia sets minimum wages, including for different classifications under the award system. Your obligation is to pay the applicable rate, regardless of how you value their work. There are many ways to help staff perform at their best - including training, mentoring and proper feedback. For some helpful tips, visit our Best Practice Guide on managing under-performance.

THEY SAY: I can't afford to pay every entitlement

WE SAY: It's a legal requirement that workers receive their full entitlements. This applies to all businesses, large and small. We take contraventions seriously, as do the courts. But our first preference is to work with people to help voluntarily correct any mistakes. If you're unsure what to do, www.fairwork.gov.au has tools and resources to help calculate the correct pay and entitlements.

THEY SAY: That's what everyone else in the industry pays

WE SAY: Whether others in your industry are doing the right thing or not doesn't affect your obligations. Employers still need to pay the minimum rates of pay set out in your award or agreement. If you're not paying staff correctly, you could be subject to penalties. We're here to help, and can provide detailed advice through our website or the Fair Work Infoline on 13 13 94.

THEY SAY: They agreed to the rate

WE SAY: It doesn't matter if the employee agreed to a lower rate, as they're still entitled to the applicable minimum wage. An employee's consent doesn't diminish your obligation to pay the current rate in your award or agreement - you must provide an employee with back-pay if they have been underpaid.

THEY SAY: They had no experience

WE SAY: Unless specified, an employee's performance or experience doesn't affect what you have to pay - employers are obligated to pay the minimum rate under your award or agreement. Unless it's part of an education or training course, all work performed by an employee, including opening and closing times, must be paid for.

THEY SAY: They're a sub-contractor, so not my responsibility

WE SAY: Genuine independent contracting can be a good way to manage demand for goods and services. But it can sometimes be difficult to work out if an employee is an independent contractor or not. Independent contractors are subject to different tax, insurance and superannuation requirements. If classified incorrectly, employees could miss out on entitlements like annual leave.

THEY SAY: We don't have time to provide pay slips

WE SAY: Providing a pay slip is not optional, it's an essential part of an employer's record-keeping obligations. An employer must issue all employees with a pay slip within one working day of paying their wages. If they don't, they'll be contravening the Fair Work Act. Our website has simple record-keeping and pay slip templates to help employers comply with their obligations.

THEY SAY: I can't be bothered learning about it

WE SAY: Not complying with your obligations is unlawful and can result in unnecessary workplace complaints, significant claims for back pay or lower staff productivity and retention. We can help you to understand the award system and your obligations via the phone or email. Our Infoline is free and if you're a member of an employer association, they may also be able to provide assistance.

THEY SAY: I didn't know I had to provide entitlements other than wages

WE SAY: It's an employer's obligation to find out about their workplace responsibilities, even if it's an area they aren't familiar with. Our Infoline is open from 8 am to 6 pm weekdays. We also have an 'After Call Checklist' on our website to help you record the advice we provide. This will help businesses correct the errors that led to the underpayments and put processes in place to ensure they won't happen again.

THEY SAY: I applied my own common sense

WE SAY: There is no place for guesswork when it comes to workplace obligations. Whether you agree with the law or not, these are legal minimum obligations. Failure to comply with your obligations can result in you being liable for back pay and potentially subject to a workplace complaint and possible enforcement action.

Don't make excuses for doing the wrong thing.

Find out what you need to know to be doing the right thing by your staff.

- Nicholas Wilson, Fair Work Ombudsman

Page reference No: 3577

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.