

## Court imposes \$23,000 penalty over sex and pregnancy discrimination

2 February 2012

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

The Fair Work Ombudsman's first prosecution relating to pregnancy and sex discrimination has been finalised, with the two former owner-operators of a Sydney printing business being penalised a total of \$23,760.

Sydney husband-and-wife Ding Guo Wang and Xiao Yu Zhang - who operated a commercial printing business at Riverwood through their private company Wongtas Pty Ltd - have each been fined \$11,880 in the Federal Court in Sydney.

Justice Dennis Cowdroy imposed the penalty today after the couple admitted breaching the sex and pregnancy discrimination provisions of the Fair Work Act by demoting and mistreating an employee after she told them she was pregnant.

Wang and Zhang have agreed to pay the employee \$2207 for economic loss she suffered as a result of the conduct, after earlier voluntarily back-paying her more than \$6000 they had underpaid her.

Justice Cowdroy said Wang and Zhang had "engaged in abusive action against (the employee) on the grounds of her gender and pregnancy" and their conduct represented a "gross violation" of their obligations under the Fair Work Act.

The employee, a Chinese-born woman in her 30s who migrated to Australia seven years ago, informed Wang and Zhang of her pregnancy in 2009 and told them she intended to take some leave around the time of the birth.

The employee was told she might not be able to return to her office position after the baby was born. After medical complications, she suffered a miscarriage and took a week's sick leave in August, 2009.

On her return to work from sick leave, the employee was demoted from office duties to packaging duties and told not to complain.

The employee's new work environment involved standing the whole time, was primarily manual labour, was up to 20 degrees warmer than the office in summer, involved little or no client contact, did not require use of English-speaking skills and often demanded overtime.

When the employee complained and asked to resume her previous office duties, she was refused and told that "many employees resign when they fall pregnant and then stay at home in bed".

Justice Cowdroy found that the employee was ultimately dismissed in December, 2009 as a result of her complaints to her employer and after she had lodged an official complaint with the Fair Work Ombudsman.

The Fair Work Ombudsman initially sought to prosecute Wongtas as well, but the action was automatically stayed when the company went into liquidation.

In his judgment, Justice Cowdroy said he inferred that Wang and Zhang wound up Wongtas for the purpose of avoiding a penalty being imposed against the company.

Justice Cowdroy noted that in July, 2010 a new company, Wangtas Pty Ltd, was formed and is operating a printing business known as Goldshining Print at the identical site that Wongtas operated its printing business. Wang and Zhang were originally the directors of Wangtas Pty Ltd.

On the penalty he imposed, Justice Cowdroy said it should "serve the wider purpose of reminding those engaged in the employing of personnel that compliance with the Fair Work Act is mandatory".

Fair Work Ombudsman Nicholas Wilson said his Office took the matter to Court because it was unlawful for an employer to take adverse action against an employee on the basis of their pregnancy or gender.

"Demoting and creating an unpleasant work environment for an employee because they are pregnant is a blatant breach of workplace law and must be discouraged," he said.

"Any employer who is not sure of how they can accommodate their business needs around a staff member's pregnancy is encouraged to discuss this with us."

Fair Work inspectors can investigate allegations of discrimination on the grounds of pregnancy, sex, race, colour, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

The Fair Work Ombudsman received 1171 discrimination complaints in 2010-11, with 89 complaints (eight per cent) relating to sex discrimination and 96 (eight per cent) relating to pregnancy discrimination.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au).

A free interpreter service is available on 13 14 50.

"We want women to be aware of their rights so they can identify when they are being subjected to pregnancy discrimination and know they can turn to the Fair Work Ombudsman for assistance," Mr Wilson said.

"Impending parenthood should be met with delight, not discrimination."

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

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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