

## Aged care centre faces court over alleged pregnancy discrimination

9 July 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 has launched a prosecution against the operators of a Victorian aged care facility, alleging they discriminated against an employee when she attempted to return from maternity leave.

Facing court is A Dalley Holdings Pty Ltd - which operates the Bellarine Court aged care facility at Geelong - and Anglesea man Andrew Dalley, who manages and part-owns the centre.

A personal care assistant at the Bellarine Court centre was allegedly discriminated against in 2010 when she attempted to return from maternity leave to her previous position as a permanent, part-time personal care assistant.

Prior to going on maternity leave, the employee - aged in her 30s - had allegedly worked six afternoon shifts and one sleepover shift per fortnight.

In its Statement of Claim, the Fair Work Ombudsman alleges that while the employee was on maternity leave, a new roster was introduced reallocating the employee's afternoon shifts to other workers, without the employee being consulted.

It is further alleged that when the employee attempted to return to work, she was initially told that no hours could be offered to her.

The employee was allegedly subsequently offered only two sleepover shifts per fortnight and no afternoon shifts.

It is alleged that when the employee stated that she could not do sleepover shifts because of family-and-carer responsibilities for her 11-month old baby, she was constructively dismissed.

The Fair Work Ombudsman claims the conduct breached provisions of the Fair Work Act that make it unlawful to discriminate against employees on the grounds of pregnancy and family-and-carer responsibilities.

The conduct also allegedly contravened the requirement under workplace laws for employers to: consult with employees who are on parental leave about decisions that may affect their position; and to allow employees to resume their previous position - or another mutually agreed position - on return from parental leave.

Other provisions of workplace laws were also allegedly breached, including laws that make it unlawful to take adverse action against an employee because they have exercised a workplace right, such as an entitlement to maternity leave.

The Fair Work Ombudsman alleges Mr Dalley was involved in A Dalley Holdings committing several breaches of workplace laws. Mr Dalley and the company face maximum penalties per breach of \$6600 and \$33,000 respectively.

The Fair Work Ombudsman is also seeking a Court Order for Mr Dalley and the company to pay the employee compensation for economic and non-economic loss.

The case is listed for a directions hearing in the Federal Court in Melbourne on August 3.

The case is the Fair Work Ombudsman's third prosecution case related to pregnancy discrimination.

The former operator of a mobile phone business was fined \$5940 earlier this year for discriminating against a Geelong employee when she attempted to return from parental leave (See: [Phone retailer fined almost \\$6000 over discrimination against new Mum \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/may-2012/20120510-ramadan-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/may-2012/20120510-ramadan-penalty) ).

The former owner-operators of a Sydney printing business were fined \$23,760 and ordered to pay \$2207 compensation earlier this year for committing sex and pregnancy discrimination breaches by demoting and mistreating an employee after she told them she was pregnant (See: [Court imposes \\$23,000 penalty over sex and pregnancy discrimination \(www.fairwork.gov.au/about-us/news-](http://www.fairwork.gov.au/about-us/news-)

[and-media-releases/archived-media-releases/2012-media-releases/february-2012/20120202-wongtas-penalty](#) ).

Employers and 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.

Information about unlawful discrimination and the types of behaviours that constitute it is available at [www.fairwork.gov.au/discrimination](http://www.fairwork.gov.au/discrimination) ([www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work))

Follow the Fair Work Ombudsman on Twitter [@fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) ([http://twitter.com/fairwork\\_gov\\_au](http://twitter.com/fairwork_gov_au)) or find us on Facebook [Facebook](https://www.facebook.com/fairwork.gov.au) (<https://www.facebook.com/fairwork.gov.au>) .

Media inquiries:

Ryan Pedler, Assistant Director, Media & Stakeholder Relations,  
(03) 9954 2561, 0411 430 902  
[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au)

Page reference No: 4377

## 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.