

Operator of Perth child care centre fined over pregnancy discrimination

18 October 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 operator of a Perth child care centre has been fined \$13,200 and ordered to pay \$5000 compensation to an employee it pressured into resigning after she became pregnant.

The Federal Court in Perth has imposed the penalty and compensation order against W.K.O Pty Ltd, which operates the Dinki Di Child Care Centre at Innaloo.

Justice Michael Barker has ordered the centre's manager and part-owner Orieta O'Leary to pay the penalty and compensation if the company fails to do so.

O'Leary, of Caversham, admitted being responsible for W.K.O breaching the discrimination provisions of the Fair Work Act in relation to conduct a 28-year-old full-time employee was subjected to in 2010 after she became pregnant.

After O'Leary became aware the employee was pregnant, she reduced the employee's hours, misrepresented to her that she was not entitled to parental leave and pressured her into resigning.

O'Leary admitted the conduct amounted to a constructive dismissal of the employee, for reasons including that the employee was pregnant and had proposed to take unpaid parental leave.

Justice Barker said the contraventions were serious.

"An appropriate message needs to be sent not only to the contraveners in this case, but also to employers at large, that it is unlawful to terminate a woman's employment because she is pregnant," he said.

Under the Fair Work Act, it is unlawful to discriminate against employees on the grounds of pregnancy, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

Discriminatory behaviour can include dismissing an employee, threatening to dismiss an employee, denying training and promotion opportunities or refusing to employ, promote or train an employee.

O'Leary's conduct, on behalf of W.K.O, also breached workplace laws that make it unlawful to take action against any employee to prevent them from accessing a workplace right, such as an entitlement to leave.

Fair Work Ombudsman Nicholas Wilson says the penalty sends a message that failing to respect the rights of pregnant employees is a serious matter.

"It is the responsibility of employers to make sure they are aware of their obligations under workplace laws and that they treat workers fairly," Mr Wilson said.

The case is the Fair Work Ombudsman's fourth litigation related to pregnancy discrimination.

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 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/february-2012/20120202-wongtas-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/february-2012/20120202-wongtas-penalty) media release.

The former operator of a mobile phone business in Victoria was fined \$5940 earlier this year for discriminating against an 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) media release.

The Fair Work Ombudsman is currently prosecuting 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, alleging they discriminated against an employee when she attempted to return from maternity leave. The case is still before the Court. See [Aged care centre faces court over alleged pregnancy discrimination \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/july-2012/20120709-a-dalley-holdings-prosecution\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/july-2012/20120709-a-dalley-holdings-prosecution) media release.

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