

Fines imposed over treatment of employee seeking to return from maternity leave

24 April 2013

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 operators of a Victorian aged care facility have been fined a total of \$30,888 for discriminating against an employee when she attempted to return from maternity leave.

A Dalley Holdings Pty Ltd - which operates the Bellarine Court aged care facility at Geelong- has been fined \$27,720 and Anglesea man Andrew Dalley, who manages and part-owns the centre, has been fined a further \$3168.

The company and Dalley have also been ordered to pay the affected employee \$5000 compensation.

The fines and compensation order, imposed the Federal Court in Melbourne, are the result of a prosecution by the Fair Work Ombudsman.

Fair Work Ombudsman Group Manager, Michael Campbell, says the case highlights that it is serious breach of workplace laws to discriminate against employees on the grounds of pregnancy and family-and-carer responsibilities.

"Employers also need to be aware that employees have a lawful right to resume their previous position - or another mutually agreed position - on return from parental leave," Mr Campbell said.

The affected employee in the case was discriminated against in 2010 when she attempted to return from maternity leave to her previous position as a permanent, part-time personal care assistant at the Bellarine Court facility.

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

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.

When the employee attempted to return to work, she was initially told that no hours could be offered to her.

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

When the employee stated that she could not do sleepover shifts because of family-and-carer responsibilities for her 11-month old baby, her employer stated that if she did not accept the sleepover shifts this would be taken as her resignation, in what amounted to a constructive dismissal under workplace laws.

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 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 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.

It is the fourth time the Fair Work Ombudsman has secured penalties in a prosecution case relating to pregnancy discrimination.

The former operator of a mobile phone business was fined \$5940 last 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 \(www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/may-2012/20120510-ramadan-penalty\)](http://www.fair-work.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 last 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)).

The operator of a Perth child care centre was last year fined \$13,200 and ordered to pay \$5000 compensation to an employee it pressured into resigning after she became pregnant (see: [Operator of Perth child care centre fined over pregnancy discrimination \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/october-2012/20121018-wko-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/october-2012/20121018-wko-penalty)).

The Fair Work Ombudsman is also prosecuting the owner-managers of a Victorian company for allegedly discriminating against a young part-time shop assistant on the grounds of her pregnancy (see: [Regulator takes further Court action over alleged pregnancy discrimination \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/november-2012/20121108-felix-prosecution\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/november-2012/20121108-felix-prosecution)). The matter is still before the Court.

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

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au. A free interpreter service is available on 13 14 50.

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