

Illawarra company fined over sham contracting

19 August 2013

An Illawarra company that hired four workers as independent contractors instead of employees has been hit with a \$161,700 fine in the Federal Circuit Court.

The employment arrangement led to underpayments of the workers totalling more \$10,000.

Metro Northern Enterprises Pty Ltd, is an Albion Park-based company which sells home-ware products.

Judge Shenagh Barnes imposed the fine after finding that the company breached sham contracting laws in relation to four sales promotion workers.

Judge Barnes has also ordered the company to back-pay the workers in full.

The fine and back-payment order are the result of a legal action instigated by the Fair Work Ombudsman.

The workers - three women and one man aged in their 20s and 30s - promoted home-ware products in the Illawarra region from January to March, 2010.

Metro Northern Enterprises classified the workers as independent contractors and paid them on a commission-only basis - but their correct classification was as employees, for reasons including that they were required to attend work and perform duties as directed by the company.

The incorrect classification led to the workers being underpaid minimum wage rates, overtime, a vehicle allowance and annual leave pay totaling \$10,327.

Individual workers were underpaid amounts ranging from \$1599 to \$3373. Fair Work Inspectors investigated when the workers lodged complaints after they resigned.

Fair Work Ombudsman, Natalie James, said the Court's decision sends a message that sham contracting will not be tolerated.

"There are serious consequences for business operators who recklessly or carelessly misclassify employees as contractors, leading to employees being denied basic workplace rights and entitlements," Ms James said.

"Successful legal actions such as this also help other employers who are complying with workplace laws by ensuring a level playing field."

Employers and workers seeking advice regarding contracting can visit the Fair Work Ombudsman's website at www.fair-work.gov.au/contractors (www.fairwork.gov.au/find-help-for/independent-contractors).

They can also contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

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Page reference No: 3140

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Fair Work Online: www.fairwork.gov.au

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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

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