

Regulator acts to enforce Court orders

1 February 2013

The Fair Work Ombudsman is implementing a new, pro-active strategy aimed at ensuring Court penalties and back-payment orders are upheld.

Acting Chief Counsel Mark Davidson says compliance with Court orders is fundamental to uphold the strong public interest factors which underpin the Agency's legal activity.

"We resolve the large majority of non-compliance issues that come to our attention by assisting employers to voluntarily rectify their issues and correct their processes to ensure ongoing compliance, and no further action is necessary," Mr Davidson said.

"However, where employers commit deliberate or serious contraventions, or where they refuse to co-operate, we will consider litigation.

"In most cases, our legal action results in the Courts issuing penalty and back-payment orders as a deterrent against repeat behaviour and to send a message to the wider community that such conduct will not be tolerated.

"In order to ensure these aims are realised and the integrity of Australia's workplace laws is maintained, we are putting additional effort into ensuring that Court orders are complied with."

Mr Davidson says the need to ensure the workplace rights of vulnerable, low-paid workers are respected is a motivating factor behind the approach.

"Our efforts also benefit employers who are complying with workplace laws, because it helps them to compete on a level playing field," he said.

The Fair Work Ombudsman has initiated about 30 separate legal actions aimed at enforcing payment of outstanding Court penalties and back-payment orders.

These include:

- Issuing of creditor's statutory demands for payment,
- Issuing legal notices against individual non-compliant directors,
- Summoning company directors to attend examinations under oath relating to the financial status of their companies and reasons for non-compliance with Court orders,
- Filing Court applications to have non-compliant companies wound-up,
- Issuing garnishee orders against creditors of non-compliant directors and companies, including their current employers and banks, and
- Securing warrants for the seizure of property, land, income and revenue owned by non-compliant companies and directors.

Recent examples include:

- A seizure warrant executed on a 1970s Holden Torana at the home of Jason and Kelly Bjorksten, whose company Burko Automotive and Transmissions, based at Shepparton, was fined \$13,200 in 2007 for underpaying a young apprentice. Following the seizure, the Bjorkstens undertook to pay the balance of the penalty that was still owing (more than \$6000) to have the seizure warrant lifted. A number of payments have been made and approximately \$2000 remains outstanding.
- After failing to respond to a summons, former Brisbane security firm director Adrian Alexander Luik was arrested in 2011 to attend an examination hearing. He subsequently paid in full an \$8000 penalty imposed on him in 2009 for his involvement in underpaying a security officer \$3267. Part of the penalty paid by Luik went towards rectifying the underpayment of the security officer.
- Following the issuing of a creditor's statutory demand against Kensington Management Services, which operates a NSW retirement village, the company paid a \$22,000 penalty imposed last year.
- Issuing a legal notice against Melbourne company director Giuseppe De Simone, who had failed to pay a \$19,800 penalty imposed on him in 2010 for his involvement in underpaying two kitchen hands at Cape Café, in Fitzroy. De Simone subsequently paid the penalty in full.

Mr Davidson says the Fair Work Ombudsman will endeavour to secure compliance with Court orders wherever appropriate.

"It is important that the small minority of recalcitrant employers and others who do not comply with Court orders are aware that we are committed to doing everything within our power to ensure Court orders secured against them are enforced," he said.

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Media inquiries:

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

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Contact us

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