

Retailer faces Court over alleged sham contracting, underpayments

Wednesday, 13 November 2013

The Fair Work Ombudsman has launched legal action against an international retail company, alleging it engaged in sham contracting activity that resulted in an Adelaide employee being underpaid more than \$32,000 over just 18 months.

Facing Court is eCosway Pty Ltd, which sells a range of household products through dozens of stores across Australia, as well as through a direct marketing network of 'business owners' who receive rewards for selling eCosway products.

It is alleged that eCosway breached sham contracting laws when it misrepresented to an employee it engaged to operate its stores at Unley and Kensington, in Adelaide, that she was an independent contractor when her correct classification was as an employee.

It is alleged that under workplace laws the worker should have been classified as a full-time employee for a number of reasons, including that the worker was not conducting her own business and eCosway exercised control over the way she performed her duties.

The misclassification allegedly led to the worker being paid according to a percentage of store sales, when she should have been paid Award employee entitlements including minimum wages, leave pay, overtime and penalty rates.

The situation allegedly led to the worker being underpaid a total of \$32,116 over an 18-month period between March, 2011 and September, 2012

The Fair Work Ombudsman discovered the alleged underpayment when it investigated a complaint lodged by the worker.

Fair Work Ombudsman Natalie James said the significant amount involved and the failure to rectify the alleged underpayment were significant factors in the decision to commence legal action.

It is alleged that eCosway committed multiple breaches of workplace laws. The company faces penalties of up to \$33,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order for full back-payment of the worker. A directions hearing is listed in the Federal Circuit Court in Adelaide on December 13.

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

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Contact us

Fair Work Online: 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

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