

Strong criticism of employer who failed to pay young workers

14 October 2013

A national sales and marketing company which paid five door-to-door salespeople only \$50 for 450 hours work, has been fined \$23,100 by the Federal Circuit Court.

In imposing the penalty in Melbourne against Australian Sales and Promotions Pty Ltd, Federal Circuit Court Judge, Norah Hartnett, said that: "What occurred (in this case) is completely unacceptable to any fair-minded person."

The Fair Work Ombudsman launched legal action against the company after investigating complaints from the workers.

The company paid the five sales workers who were aged in their 20s only \$50 for a cumulative total of 450 hours work in mid to late 2011. Four of the workers were in Melbourne and one in Brisbane.

They worked between one and three weeks each and should have been paid more than \$9,200.

The Melbourne workers were two American sisters working holidaymakers; a Taiwanese female working holidaymaker who spoke little English and a young Australian male. The Brisbane worker was a young female Australian.

They were recruited by the company through online advertisements as contractors, required to work door-to-door on behalf of Australian Sales and promotions' client, Energy Australia.

Throughout the Fair Work Ombudsman's investigation, the company maintained that the workers were contractors, however, Judge Hartnett said: "These contraventions (of workplace law) involved not simply underpayment, but in fact no payment for work performed. The employees had limited experience in, and knowledge of, the Australian workplace relations regime. They had not worked as independent contractors."

The Judge went on to say that the workers: "...were desperate for work and desperate for payment for the work performed by them. The included highly vulnerable, foreign nationals in need of remuneration to meet the daily necessities of life."

The company, during court proceedings, accepted that the workers were employees.

All five workers left the employer when it became clear that they would not be paid for the long hours worked.

The underpayment was repaid to the workers by Australian Sales and Promotions following a determination by the Fair Work Ombudsman, before legal proceedings commenced.

Fair Work Ombudsman, Natalie James, said the case sent a strong message to employers that simply calling a group of workers 'contractors' does not make them contractors.

"The Judge in this case has found that these workers were highly vulnerable and were employees who should have been paid their minimum entitlements for each hour worked," Ms James said.

"Contracting arrangements can be appropriate, but not as a mechanism to reduce payments to workers who are performing specified duties at specified times under direction from an employer.

"The Fair Work Ombudsman has a particular focus on vulnerable workers, including young and foreign workers, who can be vulnerable to exploitation in the workplace because they are often not aware of their entitlements."

Anyone who believes they are being underpaid or who may be incorrectly categorised as a contractor should contact the Fair Work Infoline on 13 13 94 or 13 14 50 if an interpreter is required.

Employers too can contact the Infoline to ensure that contracting arrangements are appropriate.

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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