

Compensation for Melbourne manager over post-maternity leave treatment

24 September 2013

A national childcare and education company will pay \$16,000 compensation to a former manager of one its Melbourne centres after contravening workplace laws by failing to return the employee to her position after maternity leave.

Guardian Early Learning Centres Pty Ltd, which also operates centres in Brisbane, Sydney and Adelaide, has admitted the contravention and agreed to pay the compensation under the terms of an Enforceable Undertaking with the Fair Work Ombudsman.

The company has also agreed to donate \$10,000 to the South Australian Working Women's Centre and revamp its workplace policies.

The affected employee, a Melbourne woman, was a permanent full-time manager at the Doncaster East centre operated by Guardian Early Learning Centres.

After falling pregnant, the employee, then aged 29, secured the approval of the company to take unpaid parental leave from November 2011 until May 2012.

But while the employee was on leave, the company permanently appointed another worker to her position.

In late April and early May 2012, the employee contacted the company by phone and in writing on numerous occasions in an attempt to arrange to return to her pre-parental leave position.

The company did not respond to the employee until June 20 and did not facilitate a return to her pre-parental leave position.

The Fair Work Ombudsman investigated after the employee lodged a complaint.

Fair Work Ombudsman, Natalie James, said the conduct breached the requirements of the Fair Work Act allowing employees to resume their previous position on return from parental leave.

Guardian's conduct also contravened Fair Work Act provisions that make it unlawful to take adverse action against an employee because they have accessed an entitlement to maternity leave, or seek to exercise their right to return to work, as well as provisions requiring employers to consult with employees on parental leave about decisions that may affect their position.

"The contraventions in this matter were serious and employers need to be aware that this sort of conduct is not acceptable and has consequences," Ms James said.

"It's important that employees are aware of their rights so they can recognise unlawful treatment when it occurs and seek assistance from the Fair Work Ombudsman.

"We believe there is still a significant lack of awareness in the community that it is unlawful to permanently replace an employee because she takes maternity leave and to not allow her to return to her position on return from maternity leave."

Ms James said the Fair Work Ombudsman agreed to enter into an Enforceable Undertaking with Guardian Early Learning Centres, as an alternative to litigation, because it was an efficient way of gaining compensation for the affected employee and gaining the company's co-operation to ensure ongoing compliance with workplace laws.

In addition to the compensation and donation, under the terms of the Enforceable Undertaking, Guardian Early Learning Centres has agreed to:

- issue a written apology to the employee,
- take out a newspaper advertisement outlining its breaches,
- develop processes to ensure ongoing compliance,
- commission workplace relations compliance training for managerial, recruitment and human resources staff, and
- include an article in its employee newsletter outlining its contraventions and detailing the employee entitlements that relate to parental leave.

Ms James said that in some cases of non-compliance with workplace law, Enforceable Undertakings are being used as an effective alternative to litigation.

"Enforceable Undertakings are an important part of our Agency's commitment to drive future compliance and help us remain confident we are upholding the provisions of the Fair Work Act," Ms James said.

A range of resources are available on the Fair Work Ombudsman's website - www.fairwork.gov.au - to assist employers and employees to understand and comply with workplace laws.

As part of a campaign aimed at encouraging new and expecting parents to check their workplace rights, the Fair Work Ombudsman has made a range of tools and resources available at www.fairwork.gov.au/workingparents (www.fairwork.gov.au/find-help-for/parents-and-families) - including information about parental leave entitlements and template letters and checklists for requesting leave and flexible working arrangements.

In addition, information on topics including parental leave entitlements, returning to work after leave and how to seek flexible work arrangements from employers is being included in more than 200,000 information packs, which are being provided to new parents in hospitals across Australia.

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

Copy of the Undertaking:

- [Enforceable Undertaking Guardian Early Learning Centres Pty Ltd \(Guardian\) \(PDF 1.6MB\) \(www.fairwork.gov.au/ArticleDocuments/718/Enforceable-Undertaking-Guardian.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/718/Enforceable-Undertaking-Guardian.pdf.aspx)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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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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