

Businessman, companies face court for allegedly underpaying staff \$870,000

NOTE:

The Fair Work Ombudsman filed legal proceedings in 2013 and 2014 in relation to the non-payment of wages and entitlements to 43 employees by five companies, and the alleged involvement of Kia Silverbrook (in relation to the five companies) and Janette Lee (in relation to only one of the companies).

The Federal Circuit Court has found that Priority Matters Pty Ltd, Superlattice Solar Pty Ltd, Geneasys Pty Ltd, Silverbrook Research Pty Ltd and Mpowa Pty Ltd contravened workplace laws. The Court ordered more than \$1.15 million in back-payments (plus interest), and imposed \$115,000 in penalties as follows:

- Priority Matters Pty Ltd was ordered to back-pay 15 employees a total of \$452,998 (plus interest) and penalised \$45,000.
- Superlattice Solar Pty Ltd was ordered to back-pay one employee \$55,969 (plus interest) and penalised \$5000.
- Mpowa Pty Ltd was ordered to back-pay 14 employees \$649,840 (plus interest) and penalised \$65,000.

The back-pay ordered has now been paid to the Fair Work Ombudsman, to be distributed to employees. Interest is also payable under the Court's orders.

Penalties and back-pay orders could not be obtained against Geneasys Pty Ltd and Silverbrook Research Pty Ltd because the companies have been placed into liquidation.

The Court has dismissed the Fair Work Ombudsman's allegations against Mr Silverbrook and Ms Lee. Although the Fair Work Ombudsman was successful against the corporate respondents, the Court also made a costs order against the Fair Work Ombudsman.

The Fair Work Ombudsman lodged appeals in the Federal Court against parts of the Federal Circuit Court's decisions on liability, penalty and costs. The Notices of Appeal lodged with the Court asserted that the Federal Circuit Court made a number of legal and factual errors in: dismissing the Fair Work Ombudsman's allegations against Mr Silverbrook and Ms Lee, determining the quantum of penalties to be imposed, and awarding costs against the Fair Work Ombudsman. The Fair Work Ombudsman's appeal was successful with the Federal Court setting aside: the findings that Mr Silverbrook and Ms Lee were not involved in the companies' contraventions, the costs order against the Fair Work Ombudsman, and the penalties imposed on Priority Matters Pty Ltd, Superlattice Solar Pty Ltd and Mpowa Pty Ltd. As a result, the matters were remitted to the Federal Circuit Court (differently constituted) to further hear matters of accessory liability and penalty. The matters are currently before the Federal Circuit Court.

3 April 2014

The Fair Work Ombudsman has commenced legal proceedings against Sydney man Kia Silverbrook and three companies he has operated, alleging 21 employees are owed more than \$870,000 in wages and entitlements.

In three separate legal proceedings filed in the Federal Circuit Court in Sydney, the Fair Work Ombudsman alleges that:

- Priority Matters Pty Ltd, which processes patent applications for inventions, underpaid 15 employees a total of \$452,997,
- Geneasys Pty Ltd, a medical research and development company, underpaid five employees a total of \$362,973, and
- Superlattice Solar Pty Ltd, a solar cell research company, underpaid one employee \$55,969.

Mr Silverbrook - who was allegedly responsible for the overall direction, management and supervision of operations at the three companies - is also a respondent to each of the Fair Work Ombudsman's legal proceedings.

Engineers, scientists, patent attorneys, patent assistants and patent design assistants are among those who were allegedly underpaid.

The Fair Work Ombudsman says one employee is owed \$166,914.

It claims the underpayments are primarily the result of employees not being paid any wages for periods of work ranging from a week

or more to several months between February and August last year.

Court papers allege that when some employees queried Mr Silverbrook about why their wages had not been paid, he told staff that the three companies did not have the necessary funds to pay wages.

Employees were also variously underpaid amounts of public holiday pay, casual loadings, annual leave entitlements, termination entitlements, redundancy pay and safety net contractual entitlements, according to Court documents.

The Fair Work Ombudsman discovered the alleged underpayments when it investigated complaints lodged by employees.

Fair Work Ombudsman Natalie James says the quantum of the alleged non-payment of wages over an extended period of time and the employer's failure to rectify them - despite efforts by inspectors to resolve the matter - are significant factors in the decision to place the matter before court.

Geneasys Pty Ltd has recently been placed into liquidation, resulting in the Fair Work Ombudsman's legal proceedings against the company being automatically stayed. However, the legal proceedings against Mr Silverbrook in relation to this matter are continuing.

Mr Silverbrook faces maximum penalties of up to \$10,200 per breach in each of the three matters, while Priority Matters Pty Ltd and Superlattice Solar Pty Ltd each face penalties up to \$51,000 per contravention.

The Fair Work Ombudsman is also seeking Court Orders for back-payments to the allegedly underpaid employees.

Directions hearings are listed in the Federal Circuit Court in Sydney today.

Employers and employees seeking assistance can 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.

Online tools include PayCheck Plus and an Award Finder to assist business owners and employees determine the correct award and minimum wages for their industry, templates for pay slips and time-and-wages records and a range of fact sheets on workplace entitlements.

An 'Industries' section on the website provides extra, specialised information for employers and employees in a range of industries, including retail, horticulture, road transport, accommodation and hospitality, cleaning, clerical, vehicle, electrical, fast food, building and construction, hair and beauty, joinery, metal manufacturing, social and community services, plumbing and security.

The 'Termination' section of the Fair Work Ombudsman's website outlines the entitlements payable in a worker's final pay and includes information on topics such as annual leave, long service leave and redundancy pay.

The Fair Work Ombudsman has established a dedicated webpage for small business employers at www.fairwork.gov.au/smallbusiness (www.fairwork.gov.au/find-help-for/small-business) . The webpage includes a Fair Work handbook for employers and a range of resources on topics such as employing staff, resolving workplace disputes and managing employees.

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Contact us

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Fair Work Infoline: 13 13 94

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