

Court rules on age discrimination case

8 April 2014

The Federal Circuit Court in Brisbane has ruled on the Fair Work Ombudsman's first litigation relating to discrimination on the grounds of age.

The Fair Work Ombudsman placed the matter before the Court after a long-serving restaurant employee was told his employment would be terminated on his 65th birthday.

The restaurant operator wrote to the employee stating that it was "the policy of the company that we do not employ any staff that attains the retirement age, which in your case is 65 years".

In his written response to the company, the employee stated that the termination of his employment was "irrefutably an act of blatant discrimination".

"It must be pointed out, my effectiveness as a food and beverage attendant when I turn 65 is no less than my effectiveness at the age of 64," he said.

After the company reaffirmed its position and advised the employee it did not wish to enter into further correspondence with him, the employee lodged a complaint with the Fair Work Ombudsman.

As a result of the Fair Work Ombudsman's subsequent investigation and litigation, the restaurant operators have this week been penalised a total of \$29,150 for contraventions of age discrimination and record-keeping laws.

The company, Theravanish Investments Pty Ltd has been fined \$20,790.

Its joint directors and equal shareholders, Nopporn Theravanish and Michael Theravanish, have also been penalised a further \$4180 each.

They currently operate two Thai restaurants at Broadbeach and Surfers Paradise - and previously operated restaurants at Nobby Beach and Robina.

Judge Michael Burnett has also instructed Theravanish Investments to pay \$10,000 compensation to the former employee.

Fair Work Ombudsman Natalie James says discrimination against employees on the grounds of age is unlawful and the outcome of the case serves as a warning to employers that it won't be tolerated.

"Limiting employment opportunities of workers because of their age is totally unacceptable and we take such conduct very seriously because of the impact it has on individual workers and the labour market generally," Ms James said.

"Discriminating against workers because of their age can have a terrible impact on their self-respect and dignity and deprive them of an equal opportunity to make a positive economic benefit to the company and the wider community.

"We encourage employees to speak up against discrimination they may have encountered in the workplace."

Under the Fair Work Act, it is unlawful to discriminate against employees on the grounds of pregnancy, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

The 65-year-old employee in the Theravanish case began working for his employer in late 1996 and subsequently worked for periods of time at a number of the company's restaurants until 2011.

His duties included taking orders, serving dishes and water, setting tables and greeting and assisting customers when asked to by the manager.

The employee took long service leave in April, 2011. When he was due to return to work, Nopporn Theravanish told him that he would work part-time.

The employee subsequently met with his employer and raised questions about a number of issues, including his pay, later putting his concerns in writing.

Shortly after, he received a letter drafted by the company's accountant informing him of the company's plans to terminate his employment on his 65th birthday. The accountant who drafted the letter had no workplace relations experience or training.

The Fair Work Ombudsman's investigation found that the conduct contravened provisions of the Fair Work Act that make it unlawful to discriminate against employees on the basis of their age.

Ms James said employers should ensure they obtain advice about workplace relations matters from an appropriately qualified source, such as the Fair Work Ombudsman, an employer organisation or a qualified workplace relations adviser.

She says every employee, regardless of their age, has the right to work without fear of discrimination.

Since it was empowered to investigate discrimination in 2009, the Fair Work Ombudsman has received more than 80 complaints relating to age discrimination, making it among the top-five types of discrimination investigated by the Agency.

The majority of age discrimination complaints come from mature-age workers, with workers aged as young as their 40s having complained they have been discriminated against because of their mature age.

The Fair Work Ombudsman has received age discrimination complaints from mature-age workers in a range industries, with the accommodation and food, health care and social assistance, and retail industries prominent.

The Fair Work Ombudsman has information about discrimination available on its website at www.fairwork.gov.au, as well as tips for employers on hiring mature age workers.

Employers or employees seeking assistance can also contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

Follow the Fair Work Ombudsman on [Twitter @fairwork_gov_au](https://twitter.com/fairwork_gov_au) [☞](http://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on [Facebook](https://www.facebook.com/fairwork.gov.au) [☞](http://www.facebook.com/fairwork.gov.au) (<http://www.facebook.com/fairwork.gov.au>) .

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

Page reference No: 3083

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.