

Retailer cautioned and “on notice” after underpaying four Chinese employees more than \$180,000

11 April 2014

The Fair Work Ombudsman has put a Brisbane retailer on notice that it must comply with workplace laws after it admitted underpaying four immigrant workers a total of \$183,000.

The Sunnybank business has been fined \$550 and issued with a Letter of Caution, which will be a key factor in determining whether litigation is warranted if the company comes to the attention of the Fair Work Ombudsman again.

Fair Work Ombudsman Natalie James says the business has avoided court proceedings on this occasion because it has no history of non-compliance with workplace laws and co-operated fully with inspectors to immediately back-pay the employees all outstanding entitlements.

"When we find employers who have made mistakes, our preference is always to educate them about their obligations and work with the business to resolve the issues without using formal enforcement mechanisms," Ms James said.

"This is an example of our fair, reasonable and proportionate response to employers who admit their mistakes, fix them immediately and put systems in place to ensure the errors are not repeated in future."

The four staff – two men and two women of Chinese heritage - were underpaid amounts ranging from \$12,000 to \$80,000.

The underpayments were the result of the employees being paid a flat rate of \$12 an hour for two years between 2011 and 2013.

The employees lodged complaints with the Fair Work Ombudsman after being alerted that their pay was below Australia's National Minimum Wage.

Three of the workers spoke limited English, and the fourth acted as an interpreter when communicating with Fair Work inspectors investigating their claim.

Inspectors contacted the business and explained that it had underpaid the workers' minimum hourly rates, as well as their penalty rates for overtime, weekend and public holiday work.

The business promptly rectified the underpayments and accepted assistance from inspectors to put processes in place to ensure future compliance.

"It is vitally important that employers take the time to ensure they are aware of the minimum pay rates applicable to their staff," Ms James said.

"A small mistake left over time can easily result in a hefty bill for back-payment of wages - so it is important employers get it right in the first place."

Each year, Fair Work inspectors identify underpayments at thousands of businesses nationally and resolve the vast majority of cases by working co-operatively with employers and employees, guiding them through the back-payment process and assisting them to put systems in place to ensure they pay their staff correctly in future.

Ms James says the Fair Work Ombudsman also uses a variety of methods to achieve compliance with workplace laws.

Between July, 2013 and the end of February, 2014, Fair Work inspectors issued 48 Letters of Caution to employers found to be in breach of workplace laws.

Inspectors also issued 91 penalties for record-keeping and pay slip breaches for the same period.

The maximum penalty is \$510 for an individual and \$2550 for a company.

Ms James says the Brisbane matter is an example of the Fair Work Ombudsman using a suite of compliance tools to ensure workplace laws are adhered to and employees receive their lawful entitlements.

"We reserve litigation for only the most serious cases, usually where there has been a deliberate disregard for workplace laws or when an employer has refused to co-operate with Fair Work inspectors," she said.

The Fair Work Ombudsman's website - www.fairwork.gov.au - contains a range of tools and resources to assist employers to understand and meet their workplace obligations.

Online tools include PayCheck Plus and an Award Finder for employers and employees to determine the correct award and minimum wages for their industry, templates for pay-slips and time-and-wages records and a range of Best Practice Guides.

The Fair Work Ombudsman has expanded, and will continue to expand, its suite of free tools and resources to assist business to ensure they are getting things right.

Late last year the Agency launched a dedicated webpage for small business owners at www.fairwork.gov.au/smallbusiness (www.fairwork.gov.au/find-help-for/small-business) .

The webpage contains free template documentation for employers to use when hiring, managing and dismissing staff, including letters of engagement and probation, leave application forms and a self-audit check list.

Ms James says providing advice to time-poor small businesses with minimal workplace relations support or expertise is a high priority for the Fair Work Ombudsman.

"Small business is entitled to credible and reliable information about their obligations in a way that makes sense to them, and via channels that they can access quickly and easily," she said.

The Fair Work Ombudsman recovered \$3.9 million for more than 2600 underpaid workers in Queensland in the 2012-13 financial year.

Employers or employees seeking assistance can contact the Fair Work Infoline on 13 13 94. Information at www.fairwork.gov.au/languages (www.fairwork.gov.au/contact-us/language-help) is also available in 27 languages, including Chinese, and employees or employers requiring an interpreter can call 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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