

Fines imposed for breaches at Melbourne bakery with history of underpayments

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The Fair Work Ombudsman has again secured penalties for breaches of workplace laws at a Melbourne bakery with a history of underpaying its employees.

Mark Siciliano - who was formerly the manager and part-owner of Universal Bread and Roll Bakery at Tullamarine - has been fined \$60,000 in the Federal Circuit Court in Melbourne.

Siciliano, of Lower Templestowe, was penalised for his involvement in underpaying and threatening to dismiss a female clerical assistant at the bakery unless she agreed to deductions from her pay.

Judge Grant Riethmuller ordered the penalty be paid within 60 days and that part be paid to the employee to rectify \$2358 in superannuation funds owed to her.

It is the second time that Fair Work Ombudsman legal action has resulted in Court-issued penalties for breaches of workplace laws at the bakery.

In 2009, Timryl Pty Ltd - which operated the bakery until it went into liquidation last year - was fined \$16,500 in the Melbourne Magistrates Court for underpaying four former employees a total of \$12,000 between 2004 and 2006 (see [Melbourne bakery fined \\$16,500 for underpaying delivery drivers \(http://www.fwo.gov.au/media-centre/media-archives/2009/04/pages/20090401\)](http://www.fwo.gov.au/media-centre/media-archives/2009/04/pages/20090401)).

In his penalty judgment on the latest case, Judge Riethmuller said Universal Bakery, under the management of Siciliano, had "a significant history of underpaying employees".

"In addition to the judicial determinations, there have been a number of complaints concerning Universal Bakery, which resulted in action being taken by inspectors to recover underpayments," Judge Riethmuller said.

"A long history of complaints about the business and non-compliance indicates that, at best, the business takes a reckless attitude to employee entitlements, and at worst, sets out to take advantage of those in need of employment, who are working in positions where they are least likely to have the skills and support necessary to ensure their workplace rights are enjoyed by them."

Judge Riethmuller said it must have been apparent to Siciliano that there was a serious problem with respect to identifying proper employee entitlements.

"This could not be said to be a case where the employer had simply overlooked, or even negligently failed to ensure that their obligations to the employee were fulfilled," he said.

"It is difficult not to conclude that the employer's attitude in this case was simply cavalier, if not exploitative."

Fair Work Ombudsman Natalie James says that while her Agency's first approach is to work co-operatively with employers to assist them to resolve issues voluntarily, it will not tolerate repeated, flagrant contraventions.

Ms James said employers also need to be aware that workplace negotiations must be free of undue pressure and that it is not possible to 'contract-out' of Modern Award pay rates and conditions.

"Successful legal actions such as this help employers who are complying with workplace laws by ensuring a level playing field," she said.

In the latest case, the employee was told it was lawful for the company to require her to work for several days without wages and that it could undercut minimum Modern Award conditions that applied to her position, including wages, superannuation and leave entitlements.

Judge Riethmuller said the conduct breached workplace laws that obliged employers to ensure they do not knowingly or recklessly misrepresent minimum entitlements to employees, particularly given the power imbalance in the employment relationship usually present between employers and employees.

"This was not a case involving a sophisticated employee, or one who was represented by a capable industrial advocate or union," he said.

"As a result, she has accepted employment on conditions below the minimum lawful entitlements, believing that she had to accept the terms if she wanted the job."

Judge Riethmuller also found that Siciliano breached workplace laws by applying undue pressure to the employee when he "impliedly threatened to terminate her employment if she did not agree to deductions from her wages" to cover the cost of mistakes she made when collating orders.

Unlawful deductions and underpayment of wages, penalty rates, superannuation and leave entitlements led to the employee being underpaid \$9012 between April, 2010 and February, 2011. All but the superannuation has now been back-paid.

Workplace laws relating to frequency of payment of wages, keeping employment records and issuing pay slips were also breached. The Fair Work Ombudsman discovered the breaches when investigating a complaint lodged by the employee.

Judge Riethmuller said as a result of the breaches, the employee "had difficulty paying bills and meeting expenses as a result of the late payment of wages. He said nothing indicated there had been any contrition, and there was limited co-operation with authorities.

"It appears clear that in this case there is a need for specific deterrence," he said.

"It is also important that in cases of this type, where there is repetition of contravening conduct with respect to a number of employees, that the penalty provides an appropriate deterrent to those who may not take the requirements seriously, even after previous penalties."

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