

## Costly penalty for ignoring back-pay request

12 November 2014

A Melbourne dental firm has been fined almost \$40,000 for failing to back-pay two employees almost \$10,000.

The Federal Circuit Court has imposed the penalty against orthodontics specialist Daladontics (Vic.) Pty Ltd.

The Fair Work Ombudsman took legal action against the company after it failed to comply with a request to back-pay \$9345 owed to two employees.

The Court has ordered Daladontics to back-pay the employees in full and penalised the company \$38,250.

Under the Fair Work Act, employers must comply with Compliance Notices issued by Fair Work inspectors unless they have a reasonable excuse, or make a Court application to challenge the Notice.

Both underpaid employees were dental technicians. One was a foreign worker who was in Australia on a temporary working visa.

The Compliance Notices were issued last year by Fair Work inspectors after investigating complaints from the employees about underpaid wages and annual leave entitlements.

Judge Norah Hartnett found that in an attempt to avoid the need for litigation, the Fair Work Ombudsman had issued written correspondence, made 15 phone calls and five site visits - but Daladontics had displayed a "systematic unwillingness and failure" to comply and respond.

"The company had ample opportunity to work with the applicant prior to the issuing of these proceedings, post the issuing of the proceedings and up to and including the penalty hearing. It has failed to do so," she said.

Judge Hartnett noted that while the company had made a back-payment to one employee earlier this year after the Fair Work Ombudsman commenced proceedings, the other employee was still owed \$3940.

She said the company's conduct "undermines the workplace relations regime as a whole" and demonstrates "a disregard for its legal obligations".

Judge Hartnett found there was a clear need for both general and specific deterrence, saying the company had not accepted responsibility for its conduct or expressed any contrition.

"There is no evidence it has taken any steps to prevent further contraventions," she said.

Fair Work Ombudsman Natalie James says employers who fail to co-operate and rectify underpayments can face a significant fine on top of a Court Order for back-payment.

"Fair Work inspectors are increasingly issuing Compliance Notices in cases where employers with contraventions refuse to co-operate and we will not tolerate employers not taking prompt action when issued with a Compliance Notice," she said.

"Successful litigations such as this also benefit employers who are complying with workplace laws, because it helps them to compete on a level playing field."

Ms James says the Fair Work Ombudsman can assist employers with accurate, reliable information and encouraged businesses to access the Agency's free tools and resources.

Online tools available at [www.fairwork.gov.au](http://www.fairwork.gov.au) include PayCheck Plus to determine the correct award and minimum wages for employees, templates for pay slips and time-and-wages records and a range of Best Practice Guides.

The website has attracted more than 2.2 million visitors since it was revamped in June and the Online Learning Centre on the website has now attracted more than 18,000 users, mostly small business operators.

Employers and employees seeking advice or 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.

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