

\$200,000 penalty for \$2.5 million underpayment

31 October 2014

An Adelaide company which underpaid 46 of its employees more than \$2.5 million has been fined \$196,000 in the Federal Court today following legal action by the Fair Work Ombudsman.

The penalty was handed down by Justice John Mansfield against Lifestyle SA Pty Ltd, which manages a network of retirement villages across metropolitan Adelaide and at Mount Barker.

The Fair Work Ombudsman commenced legal action against the company in July, 2012, relating to underpayment of wages, casual loadings, various penalty rates and annual leave entitlements to 35 employees, many of them over 60 years of age.

The alleged underpayment was about \$1.1 million plus superannuation.

However, following media coverage of the proceedings in August and December 2012, the Fair Work Ombudsman received further complaints from employees.

In February, 2013, the Fair Work Ombudsman filed an amended Statement of Claim, adding 11 new employees and alleging a further \$1.2 million in underpayments, bringing the total alleged underpayment to \$2.3 million plus superannuation.

Justice Mansfield found that eight employees had been underpaid more than \$100,000 and the largest individual underpayment was \$264,725.

The underpayments occurred between March, 2006 and February, 2011 as a result of Lifestyle SA paying the employees a flat rate of \$50 per shift to be pager monitors.

Lifestyle SA initially denied liability on the basis that the monitors were not performing "work", except when actually responding to a call-out and that it was acting on workplace relations advice.

However, the company ultimately admitted liability and rectified the underpayments and superannuation in March and April last year.

Delivering his 58-page decision today, Justice Mansfield said Lifestyle SA had "enjoyed a significant competitive advantage as a result of the contraventions".

Justice Mansfield accepted that the contraventions were not deliberate, but the company had failed to adequately consider its proper obligations to its employees.

"It is important to send a clear signal to the community at large, and specifically to employers, regarding the importance of complying with Australian workplace laws," he said.

Fair Work Ombudsman Natalie James says it is important for employers to ensure they fully understand the wages and entitlements applicable to their business, particularly penalty rates for shift work and weekends and public holidays.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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