

Businessman fined for underpaying young child-care workers more than \$360,000

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A Sydney businessman has been fined for underpaying workers at his former childcare centre more than \$360,000, leaving some struggling to pay their rent.

The Federal Circuit Court has imposed a penalty of \$28,900 against Mark Edward Myles, who formerly owned and operated the Bollygum Childcare Centre in western Sydney.

The decision follows an investigation and legal action by the Fair Work Ombudsman.

Myles admitted he was responsible for underpaying 16 childcare workers at the Bollygum Childcare Centre a total of \$361,955 between 2008 and 2013 when it was based at South Penrith and then Lethbridge Park.

Myles also admitted contravening the adverse actions provisions of workplace laws by cutting one employee's hours because she complained to the Fair Work Ombudsman.

Record-keeping and pay-slip laws were also breached.

Judge Robert Cameron found that Myles had been responsible for long-standing underpayments, noting the 16 workers were underpaid despite Myles being warned as early as March, 2008 about his workplace obligations.

Judge Cameron detailed the impact on the employees in his judgment.

A centre manager - who was underpaid \$49,533 over four years - gave evidence that she gave Myles information about correct pay rates, but he occasionally changed workers' rates without explanation.

The Fair Work Ombudsman provided evidence that rates varied significantly and that on occasions, one employee was paid just \$2.15 an hour and three other employees were paid as little as \$3.31, \$3.37 and \$3.98 an hour. On very limited occasions, some employees were paid substantially above lawful minimums.

The centre manager also said that she spent time after-hours counselling staff and assisting investigations, leaving less time for her children and marriage, which suffered as a consequence.

An 18-year-old trainee – one of seven underpaid workers aged under 21 – who was underpaid almost \$15,000 said that on several occasions she had not been able to pay her rent and utilities bills without financial assistance from others.

Another young employee underpaid \$33,000 said she had difficulties applying for an Austudy allowance because she did not receive pay slips and Myles did not respond to her many requests to rectify underpayments, leaving her unable to pay her rent on time.

Judge Cameron said the action of Myles in reducing the hours of a devoted centre supervisor aged in her early 20s - who was underpaid \$39,350 - because she lodged a complaint with the Fair Work Ombudsman, was "a matter of particular concern".

"The action taken towards (the supervisor) is indicative of either a culpable ignorance of employees' rights or a contumacious disregard of them," Judge Cameron said.

"It also revealed a wrongful hostility to the exercise of such rights."

Judge Cameron found the underpayments were "very large considering the comparatively low pay earned by childcare workers" and that Myles "did not appear to me to have much subjective appreciation of the seriousness and magnitude" of his conduct.

Judge Cameron said the penalty imposed should "serve as a warning to others not to engage in similar conduct".

Fair Work Ombudsman Natalie James says the Court's decision sends a clear message that company directors will be held to account for their decisions, and that serious conduct will not go unpunished.

"The fact that these underpayments occurred despite this business operator having been warned about the need to pay his young staff correctly is completely unacceptable," Ms James said.

"Successful legal actions such as this also benefit employers who are doing the right thing, because it helps them compete on a

level playing field.”

Ms James said the Fair Work Ombudsman was particularly active in ensuring employees were receiving the correct pay in industries that employed significant numbers of young workers reliant on minimum pay rates, such as childcare.

As the result of a national campaign in 2013-14, the Fair Work Ombudsman recovered more than \$438,000 for almost 600 childcare workers throughout Australia, including \$170,100 for 164 employees in NSW.

Ms James said the Fair Work Ombudsman was committed to helping employers to understand and comply with workplace laws, but operators also needed to make an effort to get the basics right in the first place.

She urged childcare businesses to use the online tools and resources available to them free of charge at www.fairwork.gov.au.

Employers and employees seeking advice can also call the Fair Work Infoline on 13 13 94. An interpreter services is available on 13 14 50. Small business operators can opt to be put through to a Small Business Helpline for priority service.

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