

Gold Coast travel businesses fined \$138,000 over underpayments and sham contracting

Note: The Federal Circuit Court has issued orders increasing the total fines imposed against Pierre and Caryl Himmelmann from \$22 515 to \$23 265.

2 March 2015

Underpaying staff and sham contracting has cost two Gold Coast travel businesses almost \$138,000.

The Federal Circuit Court in Brisbane imposed the penalty following litigation by the Fair Work Ombudsman.

The Fair Work Ombudsman took legal action after finding that two Main Beach-based Global Work & Travel outlets had underpaid six workers more than \$25,000.

Husband-and-wife owner-managers Pierre and Caryl Himmelmann have been fined a total of \$22,515.

Their majority family-owned companies Global Work & Travel Co. Pty Ltd and Global Work & Travel Co. (Australia) Pty Ltd have also been penalised \$60,018 and \$56,306 each.

Mr and Mrs Himmelmann's son Jurgen, a joint operator of the businesses, has been required to undertake training on employer obligations under workplace laws over his involvement.

The underpaid workers, most in their 20s, had been misclassified as independent contractors.

Three worked as travel agents, sales consultants and as a program coordinator and recruitment officer.

The Fair Work Ombudsman became involved after receiving complaints from the employees about their wages.

They were being paid retainers of between \$250 and \$750 a week, plus commissions and bonuses on sales.

But the Fair Work Ombudsman formed the view they were employees, not independent contractors.

It says they should have been paid Award entitlements, including minimum wages, leave payments, overtime and penalty rates.

As a result, the workers were underpaid a total of \$25,250 for various periods of work performed between January, 2011 and October, 2012.

Record-keeping laws were also breached.

While the underpayments were rectified in 2013, the Fair Work Ombudsman proceeded with legal action because of the seriousness of the matter and the employer's carelessness towards breaches.

The misclassification and underpayment occurred despite the Himmelmanns being advised by the Australian Tax Office (ATO) that one of the workers was an employee for superannuation purposes.

The Himmelmanns also failed to take action in response to another worker telling them that the ATO would not issue her with an Australian Business Number because she was an employee, not a contractor.

Fair Work Ombudsman Natalie James says sham contracting is a serious matter that results in employees being denied basic workplace rights and entitlements.

"There are clearly consequences for business operators who recklessly breach their employees' workplace rights through sham contracting," she said.

"In cases where we suspect sham contracting is occurring, we look behind the often carefully drafted legal documents to determine what the correct classification for workers is under workplace laws."

Employers and employees seeking assistance should visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

The website includes information relating specifically to contracting, including an overview of the difference between employees and contractors at www.fairwork.gov.au/contractors.

Other helpful online tools include PayCheck Plus to assist business owners and employees determine the correct award and minimum wages for their industry, templates for payslips and time-and-wages records and a range of fact sheets on workplace entitlements.

The My Account tool allows users to save tailored information such as pay rates and conditions of employment specific to your circumstances.

Ms James says the Fair Work Ombudsman supports compliant, productive and inclusive Australian workplaces by providing practical advice that is easy to access, understand and apply.

“Equipping people with the information they need encourages and empowers employees and employers to resolve issues in their workplace and build a culture of compliance, ensuring a level playing field for all.”

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Call through the National Relay Service (NRS):

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

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