

Child care centre operators fined \$15,000 after refusing to co-operate with investigation

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Refusal to co-operate with a Fair Work Ombudsman underpayment investigation has resulted in the operators of a NSW child care centre being fined \$15,000.

Two staff members at the Stepping Stones Child Care Centre at Oak Flats, in the Illawarra region, were short-changed \$2551 and \$790 respectively for short periods of work they performed in 2013.

After the employees complained, the Fair Work Ombudsman tried to engage with owner-operator Ailsa Tavendale and her company Stepping Stones Child Care Centre (NSW) Pty Ltd to resolve the matter co-operatively.

After the efforts were rebuffed, a Fair Work inspector issued Tavendale and her company with two Compliance Notices in January last year requiring back-payment within 21 days.

Under the Fair Work Act, business operators must comply with Compliance Notices issued by Fair Work inspectors or make a court application for a review if they are seeking to challenge a Notice.

After Tavendale and Stepping Stones failed to respond, the Fair Work Ombudsman commenced legal action.

The Federal Circuit Court in Sydney has now penalised Tavendale \$3000 and her company a further \$12,000.

The Court has also ordered Tavendale to undertake training on employer obligations under the Fair Work Act and for Stepping Stones to commission an external audit of its pay practices and provide the findings to the Fair Work Ombudsman.

The two workers were back-paid in full late last year after the Fair Work Ombudsman began its legal proceedings.

Judge Sylvia Emmett found that the contraventions were deliberate and noted that the underpayments would likely have remained unpaid if legal action had not been taken.

Noting that Stepping Stones had been the subject of previous underpayment complaints from three workers in 2013, Judge Emmett found that there was a need to deter Tavendale and her company from further breaches.

Judge Emmett also found a need to impose penalties that deterred other employers in the child care industry from similar conduct.

Fair Work Ombudsman Natalie James says underpaying employees and then ignoring requests from her Agency to rectify the matter is a serious matter and the Court has made its views firmly known.

"It is important for employers to understand that when a Compliance Notice is issued, the Fair Work Ombudsman is simply seeking to recover wages that should have been paid in the first instance - we are not seeking to be punitive," Ms James said.

However, the Fair Work Ombudsman is willing to initiate legal proceedings where Compliance Notices are subsequently ignored and the Agency believes it is in the public interest to do so.

"Enforcing Compliance Notices is fundamental for maintaining the integrity of Australia's workplace laws," Ms James said.

Fair Work inspectors are increasingly issuing Compliance Notices in cases where employers with contravention issues refuse to co-operate.

Ms James said Fair Work inspectors identify underpayments at thousands of businesses nationally each year and resolve the vast majority by working co-operatively with employers, guiding them through the back-payment process and assisting them to put systems in place to ensure they pay their staff correctly in future.

"However, if employers refuse to co-operate, Fair Work inspectors will consider enforcement measures," she said.

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.

Helpful Online resources include tools 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 their 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,” Ms James said.

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Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@fwo.gov.au)

Page reference No: 5222

Contact us

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