

\$4.8m back-pay for thousands of aged care workers after overtime pay error

8 May 2015

Thousands of aged care nurses, allied health workers and support staff are being reimbursed almost \$4.8 million after their employer discovered it had inadvertently underpaid their overtime rates for at least six years.

The employees worked for Aged Care Services Australia Group Pty Ltd (ACSAG) across its residential aged care facilities in South Australia, Victoria, NSW and Tasmania.

A total of 2112 current and former staff owed less than \$5000 have already been back-paid \$1.4 million - and under a deal struck with the Fair Work Ombudsman, those owed more than \$10,000 will be offered \$500 towards financial advice on how best to receive the payment.

ACSAG, a wholly-owned subsidiary of Japara Healthcare Ltd, conducted a review of its pay practices in November last year which identified that 4850 current and former staff had been underpaid \$4.782 million for overtime worked between November 1, 2008 and November 30, 2014.

Japara voluntarily reported the underpayments to the Fair Work Ombudsman in December and co-operated with inquiries into the matter by Fair Work inspectors.

Fair Work Ombudsman Natalie James says her Agency does not believe the underpayments were deliberate, but it is concerned about significant and systemic governance failures by such a large company.

It breached 24 separate industrial instruments.

Ms James says ACSAG has agreed to implement a range of new governance and reporting systems by July and to complete the introduction of a new a new electronic time and attendance system by the end of this year.

She revealed that both ACSAG and Japara had signed an Enforceable Undertaking (EU) with the Fair Work Ombudsman that will result in changes to prevent further contraventions.

"It will serve as an example in the health and aged care industry, and to larger corporate employers more generally, of the risks of inadequate governance and payroll systems and the benefits of early co-operation with us," she said.

The Enforceable Undertaking also requires the companies to:

- Engage independent auditors to check their calculations and rectify any additional underpayments which may be identified
- Randomly check the pay packets of five per cent of its workforce each year for the next three years
- Set up a special telephone hotline and email address for employees with inquiries about their circumstances
- Design and implement a training program for managers and contractors
- Donate \$20,000 to Alzheimer's Australia Dementia Research Foundation for the purposes of medical research, and
- Place a public notice in The Australian newspaper detailing its contraventions, the terms of the EU and apologising for the behavior.

The company has also provided an apology to the affected employees expressing its sincere regret for the contraventions.

Ms James acknowledged ACSAG for absorbing the cost of entitlements overpaid as a consequence of how it previously paid overtime.

She says the case is a timely reminder to major employers that they too, can make mistakes, and that a small error left over time can result in a hefty bill for backpayment of wages that they were not budgeting for.

"Employers big and small must ensure they take the time to understand and comply with the laws applicable to their workplace," Ms James said.

She encouraged employers who had any uncertainty about whether their workplace practices were appropriate or not to visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for advice.

Online tools include pay rate calculators to assist employers determine the correct Award and minimum wages for employees and free templates for pay slips and time-and-wages records.

The Fair Work Ombudsman provides practical assistance that is easy to access, understand and apply in support of compliant, productive and inclusive Australian workplaces.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws, without the need for civil court proceedings.

“We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate and fix the problem,” Ms James said.

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