

Gold Coast fruit and vegie wholesaler hit with \$76K repayment bill after underpaying casual workers

2 December 2016

A Gold Coast business will repay more than \$76,000 to two workers who were not paid their correct entitlements after the employer claimed ignorance of his obligations despite 25 years in business.

PWFV Pty Ltd, which trades as Pacific Avenue Wholesale Fruit and Vegetables, paid a \$20 per hour flat rate to the two casual workers who were employed to pick and pack fresh produce for customer orders in the company's Burleigh Heads warehouse before delivering the orders in refrigerated vehicles.

The company also failed to pay overtime, despite both employees working up to 60-hour weeks and failed to pay early morning shift penalties despite work sometimes starting at 2am. The company also failed to pay casual loading.

As casuals under the Storage Service and Wholesale Award 2010, the workers were entitled to a base casual rate of up to \$23.08 per hour, an early morning shift rate of up to \$25.38 and up to \$41.54 for overtime after the first two hours.

The combined underpayments totalled \$76,478.82, with one worker underpaid \$50,765.80 across almost three years prior to ending his employment in January 2015.

The second worker was underpaid \$25,713.02 across 13 months before leaving the business in March 2015.

Fair Work Ombudsman Natalie James said the case was another reminder that ignorance of required pay rates was no defence for employers, regardless of the size of a business or what competitors may be paying.

"Businesses must be aware of all the minimum lawful pay rates their employees are entitled to, including penalty rates, or they will face a nasty repayment bill," she said.

The Fair Work Ombudsman investigated after the two workers lodged requests for assistance this year. PWFV is directed by Brett Malouf, who fully-cooperated with the investigation.

It has about 10 employees and its customers include restaurants, cafes and juice bars.

The company has entered into an Enforceable Undertaking (EU) with the Fair Work Ombudsman this month as an alternative to litigation.

As part of the EU, the company back-paid the two workers with a combined lump sum of \$34,000 in October. Weekly repayments of a combined \$816.90 commenced on 1 October this year and will continue until 30 September next year.

The company must also commission external audits of its compliance with federal pay and conditions obligations this year and for the next two years. Under the terms of the EU, it will display a notice in the workplace detailing its contraventions and apologise to the two workers.

Malouf has claimed he was ignorant of the legislation and that the company's rates of pay were based on what its competitors were paying.

The company has told the Fair Work Ombudsman in the EU that it has already taken a range of actions to address the admitted breaches, including updating current employees' pay rates and engaging lawyers to prepare an employment agreement for employees.

The company will also make a donation of \$500 to workplace support service Working Women Queensland.

Ms James said the EU encouraged behavioural change and future compliance.

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, accepted responsibility and agreed to co-operate and fix the problem," Ms James said.

Ensuring an equal playing field for businesses in relation to labour costs in an often competitive marketplace was one key

component of the Fair Work Ombudsman's agenda to enforce workplace laws.

"The Fair Work Ombudsman is striving to build a culture of compliance where businesses understand and comply with their lawful obligations," Ms James said.

Tools to assist employers to follow workplace laws are available at www.fairwork.gov.au (<http://www.fairwork.gov.au>)

Employers and workers can also call the Fair Work Infoline on 13 13 94 to obtain free advice and assistance from a team of expert advisers.

Small business callers can receive priority service on the Infoline. Small business operators can also tap in to the range of easy-to-follow courses at the Fair Work Ombudsman's Online Learning Centre.

A free interpreter service is available on 13 14 50 and the website contains materials translated into 27 different languages.

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Download Pacific Avenue Wholesale Pty Ltd Enforceable Undertaking (DOCX 144.2KB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-pacific-avenue-wholesale-pty-ltd-redacted.docx.aspx) (PDF 670.7KB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-pacific-avenue-wholesale-pty-ltd-redacted.pdf.aspx)

Page reference No: 6838

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