

Early Learning Childcare Fair Work case study

Most employers are not HR professionals, so this can lead to them creating HR risk without them even knowing it.

Case overview

A Judge has penalised a repeat-offender Melbourne childcare operator \$85,000 for her latest staff underpayments, saying she required a “sharp lesson” to make her appreciate her legal obligations.

The penalty, which is the result of legal action by the Fair Work Ombudsman, has been imposed against the childcare operator for underpaying two vulnerable workers a total of \$14,341 at her childcare business. The Fair Work Ombudsman has received numerous underpayment allegations from the childcare operator’s employees dating back to 2009 and it is the second time the Agency has secured penalties for underpaying her staff.

In 2014, the childcare operator was penalised \$19,980 for underpaying five other childcare workers a total of more than \$16,000.

Handing down the latest penalty, Judge Philip Burchardt found that there was a need to impose a penalty that deterred the childcare operator from continuing to breach the law.

“A person who is the subject of a penalty finding in 2014 who continues to contravene in the fashion that the respondent did requires a sharp lesson to make her appreciate more clearly than thus far has apparently been the case what her legal obligations are,” Judge Burchardt said.

The two workers, based at Glen Waverley, were underpaid rates for minimum ordinary hours, overtime and public holidays they were entitled to between September, 2013 and December, 2015. Annual leave entitlements and broken shift allowances were also underpaid.

Case facts

- Repeat offending
- Underpaid rates for minimum ordinary hours, overtime and public holidays they were entitled to
- Underpayments of more than \$30,000 dating back to 2009
- Fines in excess of \$100,000

What they should have done

The childcare operator would have already been aware that they were currently underpaying staff. Instead of ignoring this, they should have reviewed the wages of all current staff members to ensure they were paid according to the award. Although this would mean they would have to back pay employees upwards of \$30,000, this would have prevented the additional \$100,000 fines.

How Happy HR would have helped this business avoid the fair work claim

Happy HR would have saved the business more than \$100,000 by thoroughly interpreting the relevant award and pay guide and providing bespoke advice on pay and entitlements.

Happy HR ROI (based off 30 employees)

Fair Work penalty = \$100,000 = An equivalent of 55 years subscription with Happy HR! Plus countless hours saved on administration and in Fair Work!

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