

Manufacturing 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

Seven Melbourne workers will be repaid more than \$100,000 after the Fair Work Ombudsman executed an enforceable undertaking with an Altona-based manufacturing company.

The Manufacturing company, which prepares prefabricated housing materials, underpaid the seven workers \$103,918 as a result of paying them low flat rates between March 2015 and September last year.

The workers were all of Indian background and most spoke limited English.

Several of the workers were visa holders, including two international students.

The Fair Work Ombudsman investigated after receiving requests for assistance from the workers last year.

The workers were employed to bend and weld steel on a production line in the company. Six of the workers were engaged as full-time or casual factory hands, with the other a qualified welder.

The workers were paid flat hourly rates of generally between \$18 and \$22.

However, under the Manufacturing and Associated Industries and Occupations Award 2010, they were variously entitled to higher rates for ordinary hours, casual loading, regular shift work, and Saturday and overtime hours, among other entitlements.

For example, the worker with the largest individual underpayment of \$33,454, an international student who worked as a factory hand, was entitled to hourly rates of up to \$20.94 for afternoon or night shifts, up to \$27.32 on Saturdays, up to \$36.42 for some overtime hours and up to \$45.53 on public holidays.

The company also failed to pay workers' full annual leave entitlements and to keep all necessary employment records, including of hours worked.

The company cooperated fully with the investigation and has rectified all underpayments.

As an alternative to litigation, the Fair Work Ombudsman has executed an Enforceable Undertaking (EU) with the company whereby the owner admits to contraventions of the law and must take rectification action.

In addition to repaying the workers, the EU requires the owner to make a \$5000 donation to community workplace law centre Job Watch.

It must also provide a letter of apology to the workers and display notices detailing the company's breaches in the workplace and on the company's website.

The company must also commission professional audits of its compliance with workplace laws across the next three years and rectify any breaches; provide staff training on workplace laws; register with the Fair Work Ombudsman's online My Account portal and develop processes for future compliance.

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Acting Fair Work Ombudsman Kristen Hannah said an EU was the appropriate enforcement tool given the company's cooperation, lack of any previous non-compliance issues with the agency, and its proactive and full back-payments.

"EUs have allowed us to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings, which require a greater investment of taxpayer resources and can significantly extend the time it takes for workers to receive their entitlements."

"These are vulnerable workers and executing an EU with the company means we could get their money into their pockets where it belongs as soon as possible.

"Breaching the terms of an EU is grounds for litigation and the community can be assured that we will be monitoring the company to ensure they comply with the terms of this undertaking," Ms Hannah said.

Ms Hannah said the agency was particularly concerned about cases involving underpayment of overseas workers and international students.

The Fair Work Ombudsman recently published an open letter to international students to encourage them to seek free help from the agency if they experience any issues while working in Australia.

"We are conscious that overseas workers can be vulnerable due to a lack of awareness of their entitlements, language barriers and a reluctance to complain," Ms Hannah said.

Ms Hannah said employers were expected to take action – including seeking advice if necessary – to ensure they knew the work entitlements of their staff.

"We are committed to helping employers understand and comply with workplace laws, but operators need to make a genuine effort to get the basics right in the first place," she said.

Case facts

- \$103,918 in repayments to 7 underpaid employees
- The largest individual underpayment of \$33,454, an international student who worked as a factory hand, was entitled to hourly rates of up to \$20.94 for afternoon or night shifts, up to \$27.32 on Saturdays, up to \$36.42 for some overtime hours and up to \$45.53 on public holidays.
- \$5000 donation to community workplace law centre Job Watch

What they should have done

The company should have referred to the Fair Work Ombudsman's Pay and Conditions Tool (PACT) to determine pay rates and check entitlements. As well as properly document work hours, pay rates, etc.

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

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