



Wages

Check your timesheets – in excess of \$120,000 in penalties for Employer who failed to keep time and wages records

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Employers face increased penalties for failing to keep proper records as a result of recent changes to the *Fair Work Act 2009* (Cth) through the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth).

The case of *Fair Work Ombudsman v Pulis Plumbing Pty Ltd & Anor* serves as a warning to employers that a failure to comply with employee records obligations not only leads to significant penalties, but means that employers are unable to disprove employee allegations about underpayments.

[FAIR WORK OMBUDSMAN V PULIS PLUMBING PTY LTD & ANOR \[2017\] FCCA 3013](#)

On 12 September 2014, an employee commenced working for Pulis Plumbing as a second year apprentice plumber. The employee was paid wages for standard hours and working between 10 to 12 hours each day.

The employee kept a record of his own hours that were used to fill in his timesheets that he provided to Pulis Plumbing. The employee was told by Michael Pulis, a director of Pulis Plumbing that he would be paid overtime separately and on two occasions he was paid cash sums of \$300, and \$600. From time to time when the employee asked about his overtime payments he was told that he would be fixed up the next week.

On 10 December 2014, the employee was informed that his 3 month probationary period would be completed on 12 December 2014 and his "...skills and attitude are not

to second year standard..." The employee was offered another 3 month trial or the choice of terminating his employment.

During his employment the employee worked 201 hours of overtime over a 10 week period, for which he was paid only \$1,831.77. This was less than the rate than he was paid for ordinary hours. The employee was also paid on the basis that he was engaged as an apprentice and not a labourer. However, Mr Pulis did not complete the registration requirements for the employee to become an apprentice and therefore, the weeks he worked with Pulis Plumbing did not count towards his apprenticeship training. Significantly, Mr Pulis had been informed over the Fair Work advice line before he hired the employee that the employee had to be hired either as a labourer or signed on formally as an apprentice.

After his employment was terminated, the employee contacted Mr Pulis a number of times via text messages requesting payment of his outstanding wages. Although promised, those payments were never made.

[The Contraventions](#)

On 8 December 2017, Judge Riethmuller of the Federal Circuit Court of Australia found that Pulis Plumbing Pty Ltd and Mr Pulis had contravened a number of civil remedy provisions under the *Fair Work Act* in failing to pay the employee in accordance with the *Pulis Professional Plumbing Pty Ltd and CEPU – Plumbing Division (Vic) Enterprise Agreement 2011-2015*. These

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contraventions under section 50 of the *Fair Work Act*, included:

- Failing to pay the ordinary hourly rate;
- Failure to pay the overtime rates;
- Failing to pay the ordinary hours on a public holiday not worked;
- Failing to pay meal allowances;
- Failing to pay personal leave;
- Failing to pay annual leave;
- Failing to pay annual leave on termination;
- Failing to pay annual leave loading on termination; and
- Failing to pay travel allowance.

The Respondents were also found to have failed to comply with a notice to produce documents or records, as well as failing to provide payslips and to make and keep records in accordance with the *Fair Work Regulations 2009* (Cth).

Judge Riethmuller remarked on the real and practical importance of payslips in the scheme of industrial law in his decision.

The Penalties

The employee was underpaid \$26,882.73 in the 3 month period of his employment. Only after protracted dealings with the FWO, did the Respondents pay the employee this underpayment and concede liability.

In making a decision as to penalty, Judge Riethmuller considered a number of relevant factors including; the nature and extent of the conduct, the fact that Mr Pulis had sought specific advice from the Fair Work Info Line (and ignored it) and also the Respondents lack of credible expression of regret.

In finding that the '*conduct of the respondents in this case was an outrageous exploitation of a young person*', the Court imposed a penalty of \$100,000 on Pulis Plumbing in respect of the contraventions, and a penalty of \$21,500 on Mr Pulis.

Importantly, in the absence of the Respondents being able to produce timesheets, the FWO relied upon the employee's records of the hours worked.

Judge Riethmuller issued the following caution with respect to the new changes to the *Fair Work Act* as to the reverse onus of proof (at 19):

'More recently, the FW Act has been amended to ensure that an employer who does not keep records required by the Act in ss.535 and 536, then the employer has the burden of disproving the allegations about those matters: see s.557C. In short, in future if the employer fails to keep time sheets and provide payslips the employer has the burden of disproving an employee's claim about hours worked and payments made.'

WHAT EMPLOYERS SHOULD DO

Ultimately, this case is an important reminder to employers to ensure that they:

1. Inform themselves of their workplace obligations including compliance with the terms of any enterprise agreements and/or awards;
2. Keep proper employee records and payslips;
3. Conduct human resources audits; and
4. Seek reliable workplace relations legal advice if unsure of any relevant rights and responsibilities under Australian workplace laws.

For a brief overview of some of the other changes brought about by the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) please view our article titled '[New reforms to the Fair Work Act](#)' published on 11 January 2018.

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