



Employer and Director Heavily Fined

Date : February 6, 2018

The Federal Circuit Court has relied upon the recently-introduced "protecting vulnerable workers" legislation to impose a heavy penalty on a company and its director who underpaid an apprentice employee and failed to keep time and wages records.

The new "protecting vulnerable workers" legislation:

- increased penalties by up to 10 times for serious contraventions
- strengthened the Fair Work Ombudsman's evidence gathering powers
- reversed the evidentiary onus in underpayment claims where employers fail to make and keep time and wages records

In *FWO v Pulis Plumbing Pty Ltd & Anor*:

- the employer underpaid an apprentice employee by almost \$27,000
- the employer was unable to explain why it underpaid the apprentice or why it failed to keep time and wages records for the apprentice's hours of work
- in the absence of such records the Federal Circuit Court relied upon detailed records kept by the apprentice of his working hours
- the company's contained refusal to pay the apprentices wages was stated to be '*nothing short of avarice*'
- the company's contraventions were regarded as serious and higher penalties were imposed based upon the new statutory provisions
- a **penalty** of \$100,000 was given to the employer **company**
- a **penalty** of \$21,500 was given to the **director**

The decision is a warning that employers **must** always be vigilant that they:

- know what industrial agreements apply at their workplace
- properly apply all provisions of such industrial agreements including when Modern Award rates change
- ensure employment agreements are consistent with applicable legislation and industrial instruments
- maintain comprehensive time and wages record systems
- take any complaints of underpayment seriously
- properly investigate and remedy any underpayments
- undertake regular audits to identify whether any underpayments have occurred
- seek early assistance from an employment lawyer if any advice or assistance is required – including where a union or Fair Work Ombudsman comes knocking!