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## LawTalk Blog



# Significant fine imposed on unscrupulous employer for exploiting a young worker

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**Date:** Friday June 22, 2018

In a recent article we reported on changes made to the [Fair Work Act in late 2017](#) which were intended to provide better protection to vulnerable workers, including young workers.

A recent decision the Federal Circuit Court demonstrates the commitment of the Fair Work Ombudsman (FWO) to protecting vulnerable workers and punishing unscrupulous employers who attempt to exploit them.

In [Fair Work Ombudsman v Pulis Plumbing Pty Ltd & Ors \[2017\] FCCA3013](#), the Federal Circuit Court imposed significant fines upon a business, and its owner, for breaching workplace laws and exploiting a young vulnerable employee.

In August 2014 a 20 year old man who had completed the first year of a plumbing apprenticeship, responded to an advertisement for an apprenticeship with Pulis Plumbing Pty Ltd. When he enquired about the position he was told to come in for a "trial".

The worker worked for Pulis Plumbing for a total of three months. He was paid \$12.14 per hour, the applicable rate for an apprentice.

During the first three months of his employment he was required to work over 200 hours' overtime and was not compensated for it.

After he complained about not being paid overtime, the employer dismissed him, alleging that his “skills and attitude” were not to the standard required.

## Pulis Plumbing had previously come to the attention of the Fair Work Ombudsman

Prior to these events, Pulis Plumbing had come to the attention of the Office of the FWO, which had previously given guidance to Pulis Plumbing and its proprietor about their legal obligations. When the young worker complained to the Office of the FWO about his treatment, the FWO conducted an investigation.

The FWO discovered that, although Pulis Plumbing was paying the worker the very low hourly rate applicable to an apprentice, it had not registered his apprenticeship papers with the appropriate organisation and, as such, the work which the young man had performed did not count towards his apprenticeship.

As the worker was not registered as an apprentice, at law he was a simple labourer.

The hourly rate payable for a labourer under the relevant Award was in excess of \$37.00 per hour. Accordingly, the FWO determined that Pulis Plumbing had been paying the worker less than a third of his legal entitlement.

In relation to the worker's claim for unpaid overtime, like many unscrupulous employers, Pulis Plumbing had not kept appropriate time and wage records. However, the young man had kept a diary of the overtime he had worked and he used this to substantiate his claims.

It's important to note that even if the young man had not kept diary records, recent amendments to the *Fair Work Act* meant that, as Pulis Plumbing did not have a reasonable excuse for failing to provide payslips and keep appropriate time and wage records, it would have had to disprove the worker's claims for payment for overtime. In those circumstances, even if the worker did not keep good records of the overtime hours he had worked, his verbal evidence would, in all likelihood, have been sufficient to establish his claim.

## The Fair Work Ombudsman finds the worker had been significantly underpaid

The FWO calculated that the worker had been underpaid in excess of \$26,000.00 over a three month period of employment.

Pulis Plumbing paid the \$26,000 to the worker “voluntarily”. Nevertheless, the FWO decided to take action in the Federal Circuit Court to prosecute Pulis Plumbing for breaching the law.

Often, if the FWO discovers an employer has failed to comply with their obligations, and the employer rectifies that problem voluntarily, the FWO will not prosecute. However, in this case, as Pulis Plumbing was a “repeat offender” and had earlier been warned by the FWO about its legal obligations, the FWO elected to prosecute.

# Pulis Plumbing fined \$100,000,00

After considering the facts, the Federal Circuit Court imposed a fine of \$100,000.00 on the company and \$21,500.00 against its Director/Owner personally. This was in addition to \$26,000.00 paid to the worker.

In reaching his decision, the Judge stated that in his opinion Pulis Plumbing's conduct represented an "*outrageous exploitation of a young person*" and that the provisions of the Act should be fully enforced to ensure that there was no repetition of this behaviour.

In this case Pulis Plumbing failed to provide any timesheets or records to the Court. The Judge noted that this was not uncommon behaviour for employers who were trying to obstruct investigation into potential underpayment of their staff.

## Fair Work Ombudsman releases smartphone app for workers to record their hours

The Office of the FWO has recently released an smart phone app called "Record my hours" which is designed to assist workers to keep records of the hours they have worked, in order to verify that their pay slips are correct or, if no payslips are provided, to ensure they have a record. You can [download the app](#) here.

If are a young person or migrant worker who has been underpaid or otherwise exploited or you know someone in this position, please contact Andersons workplace relations team for assistance.

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