

update

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Employment Law: Unpaid work policy incurs big fine

In a recent Federal Magistrates Court hearing, Smith v A-Mart All Sports Pty Ltd [2008] FMCA 592, Federal Magistrate Burchardt ordered the sports retailer to pay \$52,800 in penalties for not paying its employees while they set up and closed two of its stores before and after their shifts.

Federal Magistrate Burchardt described the conduct of sports retailer, A-Mart All Sports Pty Ltd, as "Dickensian" and "totally at odds with acceptable behaviour" in not paying employees at two of its Tasmanian stores for time spent setting up and closing the stores before and after their shifts.

A-Mart agreed that its conduct in requiring employees to work the additional time at its Hobart store and at its Glenorchy store without pay contravened sections 182 and 185 of the *Workplace Relations Act 1996*.

The seriousness of the court's view of such conduct is illustrated by the Magistrate's comment: "It is difficult to imagine a work practice (excluding issues relating to violence) which could be more pernicious than requiring employees, as the price of obtaining paid employment, to work not insubstantial periods of time unpaid."

The Magistrate considered a number of factors justifying a "severe" penalty:

- that the retail industry in which A-Mart operates is particularly given to the

employment of casuals or young people and that it is important that they are paid accordingly for the work they do

- employers should be deterred from engaging in this type of conduct, particularly where a substantial number of employees are affected
- although A-Mart did not initiate the unpaid work policy, but continued an existing practice established by the Tasmanian store's previous owners Rowe and Jarman, A-Mart's management knew or ought to have known about the practice
- some members of A-Mart's management who had moved across to A-Mart from Rowe and Jarman continued strictly enforcing the policy. For example, an employee was dismissed for refusing to perform the unpaid work

The Magistrate balanced these considerations alongside the cooperation and contrition of A-Mart and the fact that it had now paid the employees (an amount of \$41,235.50).

The Magistrate concluded that the appropriate penalty to be imposed on A-Mart (in addition to the back pay) was \$52,800.

What does this mean for employers?

Any expectation that employees work unpaid for any period of time is viewed very seriously by the Workplace Ombudsman and the courts with maximum penalties of \$33,000 per offence.

It is crucial for management to regularly audit the work practices that are actually happening on the ground. This is particularly important when you acquire another business.

For more information

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