

Victorian building industry apprenticeship audit program

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the Act) on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- investigating complaints or suspected contraventions of workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries and/or regions are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

This report covers the background, methodology and results of the Victorian building industry apprentices audit program.

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If you would like further information about the Fair Work Ombudsman's campaigns please contact, Steve Ronson, Executive Director – Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

Summary

Victorian domestic builders who employed first year carpentry and brick laying apprentices were the subject of a recent compliance audit program conducted by the Fair Work Ombudsman (FWO). The audit program which ran from August 2011 to June 2012, was implemented due to the constant flow of complaints received by the FWO from the domestic building industry (the industry) and the vulnerable nature of apprentices working within the industry.

Prior to conducting the assessment phase of the audit program, we liaised with key industry stakeholders seeking their feedback and assistance in promoting the audit program.

Of the 164 employers who had their records assessed for compliance with hourly rates of pay, allowances, record-keeping and pay slip obligations, only 10 (6.1%) were compliant. The 154 (93.9%) employers in contravention were found to have a total of 251 contraventions which resulted in 121 employees sharing in \$192 793.01 in owing entitlements.

A valuable outcome of this program through working with Master Builders Association (Vic) and A-Link was that we were able to design and develop an Apprentice Diary to assist apprentices understand their entitlements and improve their record-keeping skills.

Further information regarding the audit program is detailed below.

Background

Historically, the domestic building industry has had a constant flow of complaints, with many of the complainants being young workers. Apprentices are usually young workers, in their first job and may be unaware of their rights.

In our complaint work we have found some employers unaware of the various entitlements under the applicable award.

Further, the FWO has identified apprentices to be an agency priority in terms of ensuring compliance.

Aim & objectives

The aim of the audit program was to ensure carpentry and brick laying apprentices in the Victorian domestic building industry were receiving their correct entitlements.

Specifically the audit program assessed employers' compliance with;

- Record-keeping obligations
- Pay slip obligations
- Wages and allowances

During the audit program we also;

- Ensured apprentices had a training contract and arrangements for schooling
- Contraventions identified were rectified and
- Informed employers of FWO's online tools and e-newsletter

Stakeholder involvement

During July 2011 we wrote to and advised the following stakeholders of the audit program:

- Master Builders Association (Victoria)
- Housing Industry Association
- Construction, Forestry, Mining and Energy Union
- Communications, Electrical and Plumbing Union of Australia
- Australian Building and Construction Commission (now Fair Work Building and Construction)
- Skills Victoria
- Department of Education, Employment and Workplace Relations (DEEWR)

In the letter we invited the stakeholders to meet with us so we could brief them and seek their feedback on the audit program.

Further we sought the assistance of DEEWR in compiling a list of Victorian employers who engaged first year carpentry and bricklaying apprentices.

Throughout the program, FWO continued to work with MBA(V) and their apprentice support arm, A-Link, to design and publish an apprentice diary to encourage apprentices to develop good record-keeping habits.

The diary, published in August 2012, contains information on:

- Employee obligations and rights
- Award wages
- Records and payslips

The diary also provides the following;

- Tables for recording leave taken
- Weekly record sheets detailing daily start and finish times, breaks, overtime
- Important messages as "Top tips"
- Addresses to relevant internet sites

This first publication has been developed as a pilot, with the segments designed so that they can easily be edited or replaced to adapt the diary to other industries.

Methodology

Using the employer list provided by DEEWR, we randomly selected employers across Victoria for audit.

Commencing in October 2011 we wrote to those employers who had been selected for audit. The letter explained audit program objectives and requested that the employer send in a sample of two weeks' time and wage records for their apprentices for assessment.

Where records showed compliance the employer was immediately advised in writing. Where potential contraventions were identified, we contacted the employer to discuss the matter further. If this discussion confirmed that a contravention had occurred, we advised the employer of what needed to be done to rectify it.

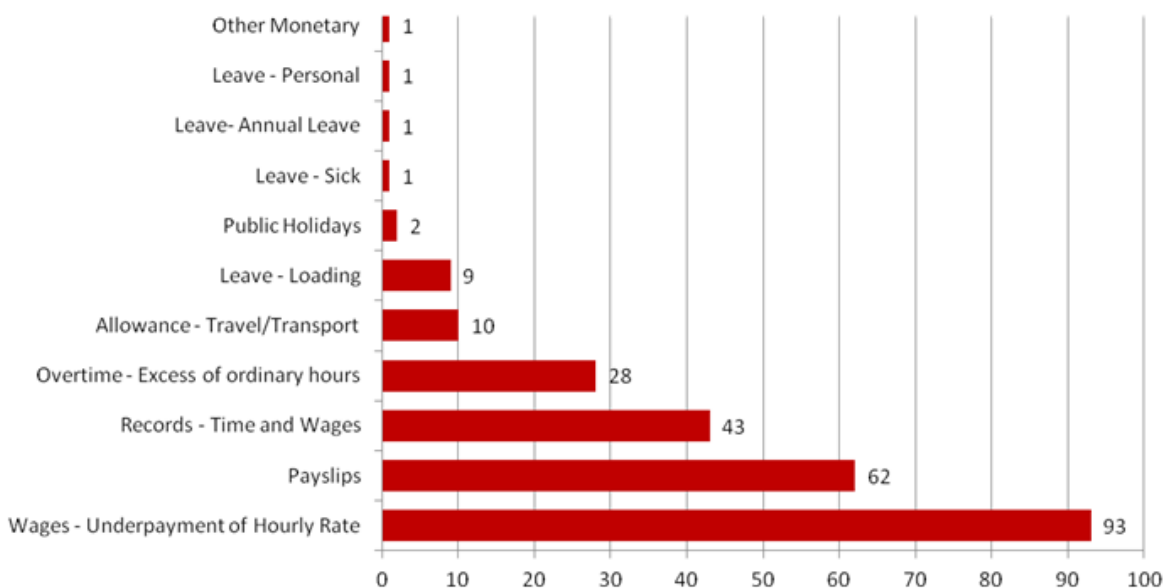
Inspectors also conducted site visits where they felt it was necessary to have a face to face meeting with the employer to explain in detail their obligations.

Results

Analysis of the audit findings on 31 July 2012, showed that of the 164 businesses we audited :

- 10 (6%) employers were found to be compliant
- 154 (94%) were found to be in contravention
 - 60 (39%) had monetary contraventions
 - 60 (39%) had record-keeping contraventions
 - 34 (22%) had both monetary and non-monetary contraventions
- We recovered \$192,793.01 for 121 employees

Below is a breakdown of the types of contraventions identified. In total 251 separate contraventions were identified;



Other findings

The 94% contravention rate is one of the highest contravention rates we have found in any of FWO's recent audit programs. Further review of the records show that the contraventions mainly arose due to two issues.

We found employers who paid the correct rate when their apprentices commenced however, they had not increased the rates of pay in line with wage review decisions. Given that the difference between the hourly rate of a first year apprentice carpenter at 1 July 2010 and 1 July 2011 was \$0.34 per hour, this resulted in an underpayment of around \$12.92 per week. In nine months this accumulated to \$503.88. This underpayment then compounded as entitlements, such as leave loading, were calculated from an incorrect rate.

Generally, we found that the employers had reviewed the apprentice's pay when they advanced to their next level.

The other identified issue was that many apprentices were working a 40 hour week, but were not being paid overtime or being given a rostered day off. This led to an underpayment of approximately \$9.50 per week for a first year apprentice at the time of the audit (50% penalty loading for 2 hours), or \$370.50 over a nine month period.

If an employer had both missed the pay increase and had not paid overtime or offered the employee a rostered day off, a first year apprentice was underpaid approximately \$874 over nine months.

It was pleasing that all employers acted to rectify the contraventions that we had identified. In our discussions with the employers, it was evident that many relied on information about employee entitlements from their accountant, employer association or apprenticeship centre.

Conclusion

The audit program demonstrated that many employers are reliant on other parties (accountants, registered training offices and employer associations) to inform them of changes to employee entitlements. This finding reinforces the importance of the FWO working more closely with these groups so as to keep them updated with important information.

In Victoria, the FWO has been invited to attend several accountants' discussion groups to speak about workplace relations issues. During these sessions, inspectors have also demonstrated FWO's online calculation tools.

We are also encouraging employers to register to the FWO e-newsletter at www.fairwork.gov.au/enewsletter so they are notified of changes which impact them without being solely reliant on information from third parties.

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