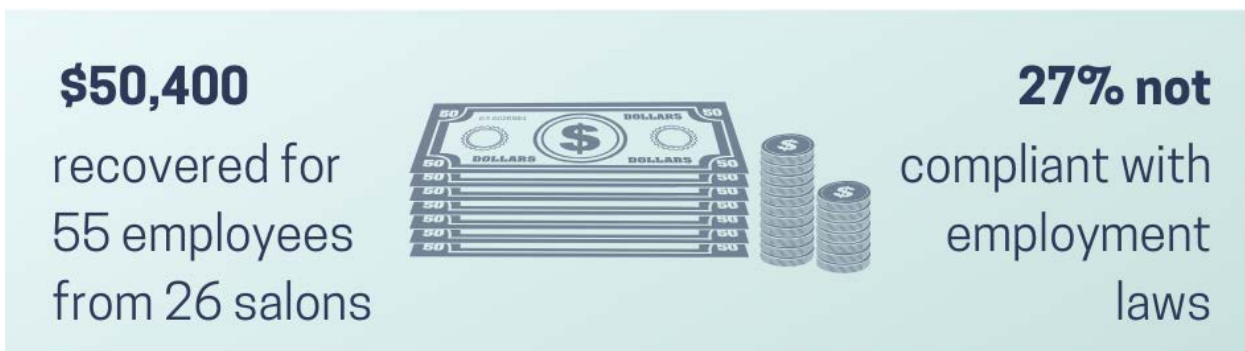




Evaluation report - Employment obligations in nail salons proactive compliance campaign

January 2020

Snapshot of the campaign



Overview of campaign

In late 2018 the Private Sector Labour Relations (PSLR) division of the Department of Mines, Industry Regulation and Safety commenced a proactive compliance campaign focused on compliance with employment obligations by owners of nail salon businesses which operate in the state industrial relations system.

Nail salons in the state industrial relations system are those where the business operates as:

- ✓ **sole traders** (e.g. Jane Smith trading as Jane's Nails),
- ✓ **unincorporated partnerships** (e.g. Jane and Bob Smith trading as Jane's Nails)
- ✓ **unincorporated trust arrangements** (Jane and Bob Smith as trustees for Jane's Nails).

In the state industrial relations system, nail technicians are not covered by an award. In this campaign, PSLR industrial inspectors were auditing compliance with the state minimum wage and the employment record keeping obligations under the *Minimum Conditions of Employment Act 1993*.

As of 1 July 2019 the minimum rate of pay for an adult (21 years or older) was \$19.66 per hour for a full time or part time employee and \$23.59 per hour for a casual employee.

Workers in the nail salon industry are a potentially vulnerable group as a significant proportion of employees in the industry are migrant or visa workers who may face barriers to understanding their employment rights.

Pilot audit

In July 2018, PSLR industrial inspectors commenced a pilot proactive compliance audit campaign that identified a high level of non-compliance with employment obligations in this industry. Of the 33 nail salons included in the pilot audit, 11 businesses, or one-third, were found to have underpaid a total of 28 employees.

Industry-wide campaign

Due to the high level of non-compliance discovered during the pilot compliance audit PSLR extended the proactive campaign to all state system nail salon businesses in Western Australia.

The industry-wide proactive campaign commenced in November 2018 with an education stage and was finalised in June 2019.

Stage 1 – Education of business owners

In the education stage of the campaign 276 nail salon businesses across Western Australian received a letter from PSLR regarding the campaign and an information brochure entitled *Minimum pay rates for staff – legal employment obligations of nail salon business owners* which provided employers with information on their key employment obligations.

The campaign letter informed businesses that after the education stage of the campaign, selected businesses would be audited by industrial inspectors.

The information brochure and information on the campaign was published on the [Employment obligations in nail salons](#) campaign page on the department's website and promoted through the Wageline contact centre and email communication channels.

Stage 2 – Compliance audits

Of the 276 nail salon businesses included in Stage 1 of the campaign, a total of 62 businesses were confirmed as being operational and employing workers at the time of the compliance audit. All 62 businesses were included in the desktop compliance audit undertaken in Stage 2 of the campaign.

Between November 2018 and June 2019 the businesses included in the compliance audit received notification from a PSLR industrial inspector that they were included in the compliance audit, and received a Notice to Produce Employment Records for a three month reporting period.

Information on the powers of industrial inspectors and penalties under the *Industrial Relations Act 1979* and *Minimum Conditions of Employment Act 1993* was also provided to business owners.

Industrial inspectors at PSLR undertook analysis of the employment records received from employers, and sought rectification of any underpayments identified in the compliance audit.

At the conclusion of the audit, each business owner was provided with a closure letter and closure pack that included further information on employment obligations under state employment laws.

Campaign results

Of the 95 nail salons that were audited in the whole campaign, 27.4 per cent (26 businesses) were found to be non-compliant with state employment laws.

The major breach identified was underpayment of wages, with some salons paying rates of pay below the state minimum wage. A total of \$50,441.68 was recovered from the 26 non-compliant nail salons for 55 employees. The average recovered amount was \$917.12 per employee. The largest amount recovered from any nail salon was a total of \$11,684 for three adult casual employees.

Two businesses were referred for formal investigation by industrial inspectors. A formal investigation involves an industrial inspector gathering evidence to determine whether there has been a breach of state employment laws.

A business owner failed to produce employment records as directed by the Notice to Produce. They avoided contact with the industrial inspector by failing to return calls and replying to emails. Due to obstructing the industrial inspector under the *Industrial Relations Act 1979*, this business was referred for formal investigation.

During the formal investigation, two industrial inspectors visited the business premises to meet with the business owner to collect employment records and to interview two employees that were present at the time. The initial visit found that the employment records were insufficient for record keeping requirements. After educating the employer on the correct record keeping requirements a follow up visit was conducted to collect more detailed employment records. Following an audit of the employment and banking records and interviews with the employees, the employer agreed to

back pay their employees the identified underpayments and signed a Compliance Undertaking to ensure continual compliance in the future.

As part of a formal investigation, an industrial inspector will interview and take statements from employees and will generally require an employer to produce relevant employment records as well as other documents such as bank records. If the formal investigation identifies breaches, an industrial inspector will provide the employer with the opportunity to respond to the allegations and to voluntarily rectify any identified breaches. If however the employer does not rectify the identified breaches, PSLR may issue the employer with an administrative warning referred to as a “Compliance Undertaking” and/or commence court action against the employer.

Case study 1

A nail salon owner had been paying three adult casual employees a flat daily rate of \$120 to \$170 per day, which equated to \$15 to \$20 per hour based on the number of hours the employees had worked. At the time, the minimum casual adult rate of pay was \$22.95 per hour.

The employer acknowledged their lack of knowledge about minimum pay rates and agreed to voluntarily conduct a self-audit of their payroll from 1 July 2018 to 30 April 2019. The employer’s self-audit found that they had underpaid their employees a total of \$11,684 over a 10 month period. One employee had been underpaid a total of \$7,712; the highest underpayment recovered for a single employee over the campaign.

The employer rectified the underpayments by back paying their employees and signed a Compliance Undertaking with PSLR to comply with employment laws and minimum rates of pay.

Case study 2

A nail salon owner had been paying six adult casual employees a rate of \$20 per hour. At the time, the minimum casual adult rate of pay was \$22.95 per hour.

The employer was initially angry with the outcome of the audit and disputed that they were required to pay their employees the correct rate of pay. The industrial inspector had to explain their responsibilities as an employer under the state employment laws and that if the identified breaches were not rectified and resolved voluntarily, the department would carry out a formal investigation that could lead to court action.

The employer agreed to rectify the underpayments by back paying their employees a total of \$4,840 and signed a Compliance Undertaking with PSLR to comply with employment laws and minimum rates of pay in the future.