

Public DEFENDER

John Rolfe & Rosemarie Lentini

191

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Please help!

I need some legal advice

Do your homework



Pregnant pause by the boss

Natasha asks: I have worked for 15 months full-time. It is a small business (myself and the director) and I recently told my director I was pregnant. She told me my role was redundant and I would only be required as a casual and not guaranteed 10 hours work per week. I am considering unlawful termination. However, due to the Small Business Code, it seems that there is a loophole and the company is not obligated to pay redundancy. What are my entitlements?

Have your legal queries answered on our blog with Maurice Blackburn legal expert Giri Sivaraman
THIS WEEK:
WORK WOES



Giri says: On termination you are entitled to accrued annual leave (not loading). You are also entitled to notice of termination or payment in lieu (which for you would be two weeks pay). However it's correct that small business isn't required to pay redundancy under the National Employment Standards. The real issue here is your employer terminating your permanent employment and offering you casual work as soon as you told her you were pregnant. You could claim compensation for lost income up to the time you intended to take maternity leave, for the lost paid maternity leave and for the hurt and humiliation at the way you were treated.

Legal information is general in nature and not to be regarded as legal advice by Maurice Blackburn

CONSUMERS have been warned to ensure they do thorough checks on builders before contracting their services after some unlicensed operators were convicted of criminal offences.

Without a licence, industry-required qualifications and appropriate insurance, builders can do more damage than good — and it can end up being a costly exercise for some homeowners.

Moustafa Nahle was recently fined \$34,169 by Parramatta Local Court for carrying out more than \$100,000 worth of residential work without a licence and using an unlicensed business name.

The court was told that in September 2009 homeowners in Prestons, in southwest Sydney, signed a contract in good faith with "Nahli Carpentry", which listed Mr

Fines fail to deter offenders

■ **May 2010:** Kevin Hitchcock convicted and fined \$7500 for working unlicensed. He last held a licence in 1985 yet continued to work and was convicted of similar offences in 1989, 1994, 1995 and 2008.

■ **March 2010:** Peter Todd Garay sentenced to 18 months jail for refusing to comply with

court orders made in 2003 stopping him from working unlicensed. He continued touting for work in the Hunter. He was convicted of similar offences in 2005.

■ **March 2010:** Newcastle builder Kevin Heslop and his firm ABC Insulation were fined \$12,000 over an insulation-

related fire in Dean Park under the government's home insulation program.

■ **May 2009:** George Harellis, trading as George's Electrical Services, was prosecuted in 2004 and 2009 for unlicensed work. He was fined \$18,373 in 2009.

Nahle as a licensed builder. During the construction, Mr Nahle asked the homeowners for "progress payments" including \$11,000 for GST even though it wasn't stipulated in the contract.

When the homeowners refused, Mr Nahle, from Auburn, threatened them and damaged their property.

On April 15 this year, Liverpool Local Court convicted Mr Nahle of damaging and destroying property and sentenced him to an eight-month suspended jail term.

Separate investigations by NSW Fair Trading revealed he also breached the Home Building Act and the Business Names Act.

When contacted, a woman speaking on Mr Nahle's behalf was unrepentant.

"He was licensed. Whatever they said is bullshit and we're taking them (Fair Trading) to court," she said, before hanging up.

Mr Nahle is the latest in a long list of "builders" who have either been fined or

kicked out of the NSW building industry for reasons including being unlicensed, not using home warranty insurance or producing particularly dodgy work.

NSW Fair Trading said that since 2006, the licences of 32 people — including 22 builders, two bricklayers, two carpenters, two painters, two concreters, one minor trade worker and one electrician — were cancelled for various breaches of the Home Building Act.

Only one of these — a builder — has managed to get it back so far. Two were permanently disqualified.

Also in that time six builders were convicted for not having the proper home warranty insurance.

Visit fairtrading.nsw.gov.au for more details

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