



Employment Court rules retail chain must pay for all hours worked

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Smiths City Group Limited, which operates 34 stores throughout New Zealand with approximately 400 store based employees, for many years, had held 15 minute sales meetings before opening the stores, which were unpaid.

“As the Employment Court’s decision today reiterates, if the activity is integral to the employees’ role, and there is expectation to attend – this is work, and employees should be paid for it,” says Labour Inspectorate regional manager Loua Ward.

“Employers should not pass the cost of doing business onto their employees. Employees must be paid for all the work they do, and this includes handover times, briefings, and in some situations, the travel time to and from a work site.

“Too often we encounter employers attempting to avoid paying their employees by dressing up activities outside of business hours as something that is for the benefit of the employee or something that’s not work. However we will look beyond that at the real nature of the activity.

“We encourage any other employers who currently are failing to pay their employees for such activities – and we know there are some out there – to fix these practices, as following this decision, they cannot continue to plead ignorance.”

The Labour Inspectorate issued an Improvement Notice to Smiths City on 14 January 2016, as the failure to pay employees during these meetings meant they were not paying at least minimum wage for all hours worked. Smiths City Group Limited lodged an objection to the Improvement Notice in the Employment Relations Authority, arguing that the meetings were not work, and the minimum wage did not apply – with the initial determination ruled in their favour.

However, on appeal of the determination, the Employment Court ruled on the side of the Labour Inspectorate – that these meetings were work, and the employees must be paid accordingly for it.

The Employment Court also ruled that Smiths City Group Limited could not use the payment of commissions and incentives to satisfy their non-compliance with the Minimum Wage Act, as this was additional income earned outside the contractual hourly rate, and not a substitution for it.

Smiths City Group Limited must now comply with the Improvement Notice, fix their practices to meet their obligations as an employer, and pay any arrears owed to employees.