

NSW Hunter Region International Students Education and Compliance Campaign

Date 15 December 2009

Summary

This campaign focused on employers of international students in and around the Newcastle area. The targeted businesses included hospitality – restaurants and take-away outlets - and hand car washes. Our campaign targeted the percentage of employers paying students correct minimum pay rates and leave entitlements, and observing record keeping practices consistent with the *Fair Work Regulations 2009*. We began the campaign with an education session for international students at the University of Newcastle, and followed this with 18 targeted audits of businesses known to employ international students.

We found eight contraventions (44.44%) in underpayment of workers, and five (27.77%) contraventions in record keeping and pay slip content in accordance with the *Regulations*. We recovered underpayments of \$64,701.00 for 80 employees. It should be noted that international students formed a small percentage of the total employees in the targeted businesses, and the identified contraventions applied to student and non-student workers. Further educational support is necessary to ensure all employers are applying the appropriate industrial instrument, and that they are clear about whether they fall under federal or state jurisdiction.

Results

We finalised 18 targeted employer audits, and whilst 7 employers were found to be compliant, 11 were found to be in contravention. The following table provides an overview of audit findings as at 15 December 2009:

Outcome of Audit	
Employers compliant (within the parameters of the audit)	7(38.9%)
Employers found to be in contravention (44%)	11 (61.1%)
Total	18

Identified contraventions

As at 15 December 2009, the following contraventions were identified:

- Eight contraventions in regards to underpayment of the hourly rate or failing to pay the 1/12th casual annual leave entitlements. We have recovered \$64,701.00 in underpayments for 80 employees.
- Five contraventions in time and wage record keeping and pay slip content.

All employers are now voluntarily complying with their obligations under the *Fair Work Act (2009)* and *Regulations*.

Background

Following print and radio coverage of alleged non payment or underpayment of international students by employers, our Hunter Region Office, in conjunction with Newcastle Trades Hall and the University of Newcastle, conducted an education session on 31 July 2009, targeting international students at the University. Approximately 60 students attended the session.

Campaign aim and objectives

The aim of the education and compliance campaign was to educate employers about correct payment of wages and leave entitlements, and their obligations in terms of record keeping and pay slip content. The objectives of the campaign were:

1. To ensure compliance with the requirements of the *Act* and *Regulations* in regards to the keeping of time and wage records and content of pay slips;
2. To provide information across the industry to assist employers to meet their obligations under federal legislation and to promote the role of the FWO;
3. To ensure the targeted employers complied with their minimum wage and entitlement obligations, and that they passed on the wage increase effective from pay period commencing on or after 1 October 2008 to all entitled employees.

Stakeholder involvement

We consulted with the Secretary of Newcastle Trades Hall Council and the Cohort Liaison Officer – International Student Support - University of Newcastle in July 2009.

We sought the following assistance from Newcastle Trades Hall:

- Details of allegations made to them regarding employers underpaying international students;

We sought the following assistance from University of Newcastle:

- Assistance in arranging and promoting an information session for international students.

Methodology

The methodology included the following stages:

- We met with local Trades Hall and The University of Newcastle representatives;
- A media release announced the student information session and alerted

- We held the information session at the University of Newcastle;
- We conducted targeted audits by field.

Anecdotal and other results

Workplace inspectors noted that where contraventions occurred, they applied to all employees, not only to those identified as international students. Many employers remain confused in relation to which industrial instrument applies to their workplace, and whether they are covered by the federal or state jurisdiction.

Many of the employers that Newcastle Trades Hall Council and the University of Newcastle alleged were underpaying international students were identified as sole traders or partnerships, and were, therefore, outside FWO jurisdiction. This information is being forwarded to the NSW Office of Industrial Relations for follow up action, and we will advise Newcastle Trades Hall Council.

Conclusions

This targeted campaign was undertaken in light of allegations made to the media of international students being underpaid their minimum entitlements. This campaign has provided education to both employers and international students as to their rights and responsibilities under Commonwealth workplace legislation, and assisted in raising the profile of the Fair Work Ombudsman. We recovered underpayments of \$64,701.00 for 80 employees.

We found that most employers were trying to comply with Commonwealth workplace laws, although there is still work needed to educate employers as to their obligations relating to correct payment of wages, and accurate record keeping and provision of correct pay slips. Further educational support is also necessary to ensure that employers apply the appropriate industrial instrument, and that they have clarity as to whether they are covered by federal or state jurisdiction.