

Rogue operator penalised for exploiting overseas backpackers on NT mango farms

14 December 2017

The Fair Work Ombudsman has secured a \$25,412 penalty in Court against a rogue operator who exploited overseas workers on mango farms near Darwin.

Vinai Chaipom has received the penalty in the Federal Circuit Court after he admitted underpaying 12 workers a total of \$35,630 over a period of just two months in 2015.

With all underpayments remaining outstanding, the Court also ordered Chaipom to back-pay the workers in full within 30 days.

Chaipom formerly ran a business trading as The Mango Shop, sourcing fruit from farms around Humpty Doo, and selling them via a roadside stall.

Fair Work Ombudsman inspectors investigated after receiving underpayment allegations from workers.

Inspectors found that Chaipom had engaged 12 workers to perform between four days and just under eight weeks of picking, weeding and pruning work on mango farms at Livingstone, Noonamah and Humpty Doo from September to November, 2015.

Chaipom paid four of the workers nothing, while paying others amounts ranging from \$500 to \$1000 – or the equivalent of between \$2.68 and \$4.77 an hour.

Most of the exploited workers, aged as young as 19, were backpackers in Australia on 417 working holiday visas from Germany, France, Italy, the Netherlands, the UK and Taiwan.

Most camped on the mango farms while working for Chaipom.

The backpackers were hired after they responded to online job advertisements or approached Chaipom for work.

Many were keen to earn money to support their travels and become eligible to apply for a second year on their 417 visas by satisfying the requirement to undertake 88 days' specified paid work in a designated regional area and in certain industries in their first year.

As casual employees, under the Horticulture Award 2010 at the time they were entitled to be paid minimum hourly rates ranging from \$19.45 to \$21.61.

Individual underpayments range from \$648 to \$5119.

Chaipom also failed to issue the backpackers with pay slips, leaving them with no proof of completing the picking work and hampering their ability to apply for a second year on their 417 visas.

In addition, Chaipom contravened sham contracting laws by telling two of the employees they were independent contractors.

The contraventions occurred despite Fair Work Ombudsman inspectors having educated Chaipom about minimum Award rates in October 2015 when they visited mango farms as part of the Agency's national Harvest Trail Inquiry.

Fair Work Ombudsman Natalie James says exploitation of vulnerable workers on Australian farms is completely unacceptable conduct.

"This type of appalling treatment of overseas workers on Australian farms is extremely concerning and the outcome of this matter should send a message to rogue operators like Chaipom that their actions have serious consequences," Ms James said.

Ms James says the Fair Work Ombudsman has dedicated significant resources to addressing the exploitation of vulnerable workers on Australian farms.

The Fair Work Ombudsman's Harvest Trail Inquiry is focusing on the horticulture and viticulture sectors nationally in response to ongoing requests for assistance from employees in the sector, persistent underpayments and confusion among growers and labour-hire contractors about their workplace obligations.

The Harvest Trail Inquiry, which commenced in 2013 and is due to report its findings next year, has been run alongside the Fair Work Ombudsman's Inquiry into the experiences of 417 working holiday visa-holders in Australia.

The 417 Visa-holder Inquiry found the requirement to do 88 days of specified, regional paid work to qualify for a second-year visa was

unintentionally creating an environment where some unscrupulous operators were exploiting overseas workers. The [417 Visa-holder Inquiry Report \(www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports\)](http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports) is available online.

Ms James says it is important for any 417 visa holders who take up employment in Australia to establish from the outset who their official employer is and that they will be paid lawful minimum rates and issued with pay slips.

“It is crucial for backpackers working on 417 visas to establish these basics from the outset because it can help them avoid entering into situations where they can be exploited and it can help them avoid difficulties applying for a second year on their visas,” Ms James said.

“Any worker who finds themselves in a situation where they are concerned they are being exploited or treated unfairly should contact the Fair Work Ombudsman for free advice and assistance as soon as possible.”

In a recent matter, two 417 visa holders who were paid unlawfully low, flat rates while working at a crocodile farm in far north Queensland lodged requests for assistance with the Fair Work Ombudsman after becoming concerned their working arrangements might not satisfy the requirements for second year visas.

After the Fair Work Ombudsman intervened, the workers were back-paid their outstanding wages and one of the workers has since successfully applied for a second-year 417 visa, while the other was intending to apply.

Ms James says employers should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has now come into effect, increasing the maximum penalties for conduct including deliberate exploitation of workers.

“The maximum penalties available for some serious conduct that occurs today or in the future are now significantly higher than the penalties available to be imposed in matters such as our action against Chaipom, where the contravening conduct pre-dates the commencement of the Act,” she said.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 30 languages and is available on the website and fact sheets available include advice on workplace rights for visa holders and migrant workers.

The Fair Work Ombudsman’s Anonymous Report function is available in 16 languages other than English, enabling non-English speakers to [report potential workplace breaches in their own language \(www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/workplace-help-in-other-languages/report-a-workplace-issue-in-your-language\)](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/workplace-help-in-other-languages/report-a-workplace-issue-in-your-language) , without being identified.

The Fair Work Ombudsman’s online tools and resources can also assist employers to determine their applicable Award, as well as classification and pay rates, allowances, overtime and penalty rates.

The Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) [☞ \(http://twitter.com/NatJamesFWO\)](http://twitter.com/NatJamesFWO) , the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) [☞ \(http://twitter.com/fairwork_gov_au\)](http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au [☞ \(http://www.facebook.com/fairwork.gov.au\)](http://www.facebook.com/fairwork.gov.au) .

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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