

Chinese worker in Sydney underpaid \$36,000

9 February 2017

The Fair Work Ombudsman has again warned that paying overseas workers low, flat rates is unlawful after a Western Sydney homewares retailer was caught paying a Chinese employee just \$12 an hour.

Joyce Homeware underpaid the employee a total of \$36,459 between November 2013 and August 2015. Joyce Homeware had an outlet at Mt Druitt and Westfield Liverpool shopping centre. The underpayments occurred at the Liverpool outlet which has since closed.

Fair Work Ombudsman inspectors investigated last year after the worker, who was in Australia on a subclass 309 partner visa and aged in her 30s, lodged a request for assistance.

Inspectors found the worker, a shop assistant employed on a casual basis, had been paid flat rates of \$12 to \$12.50 for all hours worked.

However, under the General Retail Industry Award, she was entitled to hourly rates of up to \$23.74 for ordinary hours, up to \$37.98 on weekends and \$52.22 on public holidays.

The owner-operators of Joyce Homeware, Chinese migrant couple Zheng Yi (Michael) Zhang and Nai Fen (Frances) Pan, told inspectors they had limited understanding of lawful minimum pay rates and had asked around to find out how much to pay workers.

Mr Zhang and Ms Pan and their company Chaselink International Pty Ltd have avoided legal action by fully co-operating with inspectors and agreeing to back-pay the worker in full by March 2017 under the terms of an Enforceable Undertaking (EU) with the Fair Work Ombudsman.

Fair Work Ombudsman Natalie James says exploiting overseas workers is extremely serious conduct and employers need to realise that overseas workers are entitled to the same minimum wages as Australian citizens.

"We are actively seeking to dispel the myth that it's OK to pay overseas workers a 'going rate' that undercuts the lawful minimum wage rates that apply in Australia," Ms James said.

"Minimum wage rates apply to everyone in Australia, regardless of their visa status, and they are not negotiable.

"We treat cases involving underpayment of overseas workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements, language barriers and a reluctance to complain."

The matter comes after a Judge recently imposed more than \$200,000 in penalties and issued a stinging rebuke to two migrant Asian business operators in Brisbane for their "extremely serious" conduct in exploiting five workers from a similar cultural background.

Ms James says she is increasingly concerned about the number of employers from culturally and linguistically diverse backgrounds who are exploiting workers from within their own ethnic communities.

"I want to make it clear that the lawful obligations to pay minimum wage rates, keep appropriate employment records and issue pay slips apply to all employers in Australia and they are not negotiable," she said.

"I understand there are cultural challenges and vastly different laws in other parts of the world, but it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages."

Under the Enforceable Undertaking, Mr Zheng, Ms Pan and their company have agreed to a range of actions aimed at changing behaviour and ensuring future compliance.

They will commission four professional external audits of pay practices for periods until July 2018, report the results to the Fair Work Ombudsman and rectify any issues discovered.

They will also place a notice detailing their contraventions in Sydney's Australian Chinese Daily in the Chinese language, and in their workplace.

They must also commission training on workplace relations laws, register with the Fair Work Ombudsman's My Account service for employers and provide evidence of implementing systems to ensure future compliance.

Enforceable Undertakings are used where the Fair Work Ombudsman forms a view that a serious contravention has occurred, but the employer had accepted responsibility and agreed to co-operate and fix the problems.

Ms James says there is a strong public interest in using Enforceable Undertakings in appropriate matters because they enable her Agency to efficiently achieve outcomes that are not possible through litigation, which is more time and cost intensive.

Employers and employees seeking assistance can visit www.fairwork.gov.au (<http://www.fairwork.gov.au/>) or call the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages, including Chinese.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](http://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>) , the Fair Work Ombudsman [@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>) .

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Download the [Chaselink International Pty Ltd Enforceable Undertaking \(DOCX 154KB\)](http://www.fairwork.gov.au/ArticleDocuments/971/chaselink-international-pty-ltd-enforceable-undertaking-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/971/chaselink-international-pty-ltd-enforceable-undertaking-redacted.docx.aspx) (PDF 612.3KB) (www.fairwork.gov.au/ArticleDocuments/971/chaselink-international-pty-ltd-enforceable-undertaking-redacted.pdf.aspx) .

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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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