

Gold Coast tour bus operator to make stop in Court over sham contracting and underpayment claims

26 January 2017

A Gold Coast tour bus operator will face the Federal Circuit Court in Brisbane over claims it engaged in sham contracting and underpaid two workers from non-English speaking backgrounds a total of \$43,477.21.

The Fair Work Ombudsman initiated the case against AVA Travel Pty Ltd, along with its operations manager Mr Terry Huang, sole director Mr Chin Kuen Yung and partner firm JTH Enterprises Pty Ltd after receiving a request for assistance from an employee.

The request for assistance centred on a claim that staff received a text message in September 2014 requiring them to provide an ABN and informing them that they would be engaged as independent contractors from 1 October 2014 onwards. Workers continued to perform work in the same manner as they had previously done and were to be paid the same flat rate, however they were not paid any superannuation.

The FWO alleges that this amounts to sham contracting as the workers were still in an employer and employee relationship with AVA Travel and were not genuinely engaged as independent contractors.

In addition to allegations of sham contracting, an investigation carried out by the FWO found that by paying employees a flat rate of \$20.59 for all hours worked, AVA Travel had significantly underpaid its workers. The underpayments were a result of failing to pay the correct rates for a range of work including weekend hours, public holiday hours and overtime.

Inspectors calculated that one employee was short-changed a total of \$27,938.61 while the second employee was underpaid by \$15,538.60.

AVA Travel has acknowledged the underpayments and set in place a payment plan to reimburse the workers.

Fair Work Ombudsman Natalie James says the agency took the matter to court due to the nature of the alleged contraventions and the significant amount of underpayments that occurred over such a short timeframe.

“The FWO has commenced proceedings relating to sham contracting in the passenger vehicle industry previously and the allegations put forward in this case are also very concerning,” Ms James said.

Sham contracting is a serious contravention of the Fair Work Act 2009 where employers attempt to avoid their obligations by disguising employment arrangements as independent contracting arrangements.

“It is important that employers in all industries understand that they cannot avoid their obligations under workplace laws by applying a false label to an employment relationship,” Ms James said.

Employees and employers who are unsure about their workplace rights and obligations can seek assistance at www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

Small business owners can opt to receive priority assistance when calling the Infoline.

An interpreter service is also available on 13 40 50.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

The Agency recently launched an Anonymous Report function which enables members of the community to alert the Fair Work Ombudsman to potential workplace issues.

Intelligence can be provided at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://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) or find us on Facebook 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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.