

## Deliberate and systemic underpayments lead to penalties against a former 7-Eleven operator

25 July 2017

A former Brisbane 7-Eleven operator has been hit with \$168,000 in penalties for short-changing workers and falsifying records to conceal the underpayments.

The orders imposed by the Federal Circuit Court were the result of litigation by the Fair Work Ombudsman and followed admissions by Brisbane man Jim Chien-Ching Chang that his company had underpaid eight staff a combined \$19,937.

Mr Chang, the former franchisee of the store at 80 Vulture Street, West End, has been ordered to pay \$28,000 and his company JS Top Pty Ltd to pay \$140,000. Mr Chang and his company sold the 7-Eleven franchise in late 2016 and the franchise is now operated by an entity unrelated to these contraventions.

Court imposed penalties against 7-Eleven operators have now topped \$1 million in litigations initiated by the Fair Work Ombudsman.

Mr Chang admitted his company had paid flat hourly rates as low as \$13 an hour, resulting in significant underpayment of the minimum hourly rate, casual loadings and penalty rates for shift and weekend work that employees were owed under the General Retail Award 2010.

One employee was underpaid \$13,962 between July, 2013 and August, 2014, while the others were underpaid amounts ranging from \$203 to \$1835 for shorter periods of work.

Mr Chang also made false and misleading entries into the 7-Eleven payroll system and provided false records to the Fair Work Ombudsman.

In his penalty judgment, Judge Michael Jarrett found that Mr Chang knew the relevant Award that applied but had "... established a business model that relied upon a deliberate disregard of the employees' workplace entitlements and a course of conduct designed to conceal that deliberate disregard".

Judge Jarrett found no evidence that the company's contraventions were motivated by poor cash flow saying: "rather, it seems, the company's profit has been enhanced by the underpayments concerned".

All underpayments have now been rectified.

The store was one of 20 7-Eleven outlets targeted for surprise night-time visits by the Fair Work Ombudsman as part of a tri-State operation in September, 2014.

The Fair Work Ombudsman has taken legal action against nine 7-Eleven operators since 2009 with litigations involving three operators still before the courts.

Fair Work Ombudsman Natalie James said the substantial penalties imposed send a clear message that exploiting overseas workers is serious conduct that will not be tolerated.

"Businesses should be in no doubt that 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," Ms James said.

"The deliberate nature of the underpayments and the lengths that Mr Chang went to in order to hide his conduct from us and from the 7-Eleven head office is of grave concern. Mr Chang was fully aware of his lawful obligations and chose to manipulate the system in order to undercut the entitlements of vulnerable workers.

"We are pleased that the Court has seen fit to penalise such blatant conduct and hope that this serves as a warning that such behaviour will be penalised," Ms James said.

7-Eleven entered into a Proactive Compliance Deed with the Fair Work Ombudsman late last year.

Under the terms of the Deed, 7-Eleven has committed to a range of measures designed to ensure all its workers receive their lawful entitlements through strong accountability for all operators across its franchise network and supervision by the Fair Work Ombudsman.

The Deed is aimed at addressing the non-compliance issues identified by the Fair Work Ombudsman's Inquiry Report into workplace non-compliance in the 7-Eleven network.

For more information, see [7-Eleven signs on with Fair Work Ombudsman to set the standard for franchising in Australia \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/december-2016/20161207-7-11-pcd-mediarelease\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/december-2016/20161207-7-11-pcd-mediarelease) .

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Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

[matthew.raggatt@fwo.gov.au](mailto:matthew.raggatt@fwo.gov.au) (<mailto:matthew.raggatt@fwo.gov.au>)

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