

Labour-hire operator penalised for flouting laws relating to overseas workers on Queensland farms

26 July 2017

A Queensland labour-hire company and its manager have been penalised a total of more than \$84,000 after flouting record-keeping and pay slip laws relating to vulnerable foreign workers, despite having previously been cautioned by the Fair Work Ombudsman.

The penalties have been imposed against HTA Farmings Pty Ltd and company manager Tuan Anh Le in the Federal Circuit Court, following legal action by the Fair Work Ombudsman.

HTA Farmings has been penalised \$70,550 and Mr Le has been penalised an additional \$14,110.

The Fair Work Ombudsman attempted to conduct a full audit of HTA Farmings in 2015 as part of its national Harvest Trail Inquiry into exploitation of overseas workers on Australian farms.

However, a lack of basic records of hours worked by employees meant that the Fair Work Ombudsman was only able to calculate the entitlements of six out of 265 employees HTA Farmings had supplied to pick and pack strawberries at a Caboolture strawberry farm.

It was determined that the six employees were underpaid a total of \$316 over limited periods for which records were available. The Employer's failure to comply with their lawful record keeping obligations prevented the FWO from determining whether the remaining 259 employees were paid their lawful entitlements.

Many of the employees were overseas workers from Asian countries and were in Australia on 417 working holiday visas at the time.

HTA Farmings also contravened pay slip laws and failed to have piece work agreements in place for employees who were paid piece rates.

The contraventions occurred despite the Fair Work Ombudsman having formally cautioned HTA Farmings for similar non-compliance in 2013.

In a [speech \(www.fairwork.gov.au/ArticleDocuments/764/natalie-james-australian-industry-group-speech.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/764/natalie-james-australian-industry-group-speech.docx.aspx) earlier this year, Ms James said her agency was seeing more cases of blatant record-keeping failures.

"We are concerned the current penalties available to the courts for record-keeping breaches are too low and this creates a perverse incentive for some operators to deliberately breach their record keeping obligations to conceal the underpayment of wages," Ms James said.

"We welcome the Government's commitments to enhance workplace laws to better protect vulnerable workers, including increasing applicable penalties for serious record-keeping contraventions.

"It is completely unacceptable for an employer to fail to keep records of the hours their employees work. We provide free advice and resources to assist employers to understand and comply with their record-keeping obligations," Ms James said.

Ms James says the case is an example of the value of workers keeping their own records.

"Earlier this year we launched a new app, Record My Hours, which is particularly aimed at helping young and migrant workers to protect themselves by making the keeping of a work diary much easier through the use of smartphone technology," Ms James said.

"This does not absolve employers from their record-keeping obligations - but it provides employees with an extra layer of protection if their employer neglects their record keeping responsibilities, as occurred in this case."

The Record My Hours app is available for download now from iTunes or Google Play stores.

Ms James says while employers must comply with their obligations under the Fair Work Act, workers could protect themselves by understanding their workplace rights and knowing where to go to seek help with a workplace issue.

"I strongly encourage all workers engaged on the harvest trail to download the Record My Hours app and to check out the Fair Work Ombudsman's [top tips for backpackers, seasonal workers and growers \(www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign#top-tips-for-backpackers\)](http://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign#top-tips-for-backpackers) online," Ms James said.

The 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 August 2013 and is due to report its findings this year, has been run alongside the Fair Work Ombudsman's recently completed 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) is available online.

Employers and employees can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

Fair Work Ombudsman's [Pay and Conditions Tool \(PACT\)](http://calculate.fairwork.gov.au/findyouraward) (<http://calculate.fairwork.gov.au/findyouraward>) can assist business owners to calculate pay rates applicable to their business and templates for pay slips and time-and-wages sheets are available for free download.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 30 languages and is available on the website.

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their rights.

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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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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