

## Labour-hire operator penalised for underpaying overseas workers on Queensland farms

2 June 2017

Fair Work Ombudsman legal action stemming from the national Inquiry into exploitation of overseas workers on Australian farms has led to a Queensland labour-hire operator being penalised a total of \$102,000 for underpaying 144 employees.

Queensland man Ram Kumar has been penalised \$17,000 and his labour-hire company, Seasonal Farm Services Pty Ltd, has been penalised a further \$85,000.

The penalties were imposed in the Federal Circuit Court in Brisbane after Kumar admitted his company had underpaid 144 employees a total of \$60,780 between June, 2014 and June, 2015.

Kumar and his company also contravened record-keeping laws, including by failing to keep any records for a further 70 employees who were paid piece rates.

The lack of records prevented the Fair Work Ombudsman from assessing whether the additional 70 employees had received their minimum lawful entitlements.

Judge Vasta said he found the record keeping contraventions to be “extremely serious” noting the impact it had on ascertaining the quantum of underpayment to the employees who were paid piece rates.

“The problem for the Fair Work Ombudsman was that there were no records as to the hours worked for the piece rate employees... This made the investigation extremely difficult. Now, whilst that does mean that there is no evidence as to what was worked, it means that there is no way of ascertaining whether or not the breaches of the Fair Work Act 2009 were even more blatant than what the investigation discovered,” Judge Vasta said.

Seasonal Farm Services was investigated as part of the Fair Work national Harvest Trail Inquiry aimed at addressing non-compliance in the horticulture industry.

Fair Work inspectors found that Seasonal Farm Services had underpaid the 144 employees after supplying them to pick and pack fruit and vegetables on a number of farms in Queensland’s Lockyer Valley.

One of the employees also performed supervisor duties.

Most of the employees were overseas workers from Asia, Europe and the UK who were in Australia on 417 working holiday visas at the time with three aged as young as 19.

A number of the employees were working for Seasonal Farm Services to become eligible to stay in Australia for two years on their 417 visas by undertaking 88 days specified work in a designated regional area and in certain industries in their first year.

The employees were generally paid flat rates ranging from \$16 to \$18.50 an hour.

However, as casual employees under the Horticulture Industry Award, the pickers and packers were entitled to be paid \$21.09 an hour, with the supervisor entitled to \$22.31. The largest individual underpayment was \$2820

The underpayments persisted for several months after the Fair Work Ombudsman put Kumar and his company on notice of the need to pay minimum award rates.

Fair Work Ombudsman Natalie James says the penalties imposed send a message that serious consequences apply for blatant non-compliance with basic record-keeping and minimum wage obligations.

“This should serve as warning to any employer in the horticulture industry tempted to disregard its employees’ basic workplace rights,” Ms James said.

“We will do everything within our power to pursue any employer that thumbs its nose at their lawful obligations and exploits its workforce.”

Ms James says employers should also realise that exploitation of overseas workers is treated particularly seriously.

“Visa-holders can be vulnerable if they are not fully aware of their rights or reluctant to seek help, so we place a high priority on

taking action to ensure their rights are protected," she said.

"Minimum lawful pay rates in Australia apply to everyone and are not negotiable. Employers cannot undercut minimum wages, even if employees offer to accept lower rates."

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.

A key focus of the Harvest Trail Inquiry has been ensuring growers and their representatives apply due diligence to the labour-hire operators from which they are sourcing their workers.

The Harvest Trail Inquiry, which commenced in August 2013 and is due to report its findings later 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 are exploiting overseas workers, who are often reluctant to complain.

In 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), the Fair Work Ombudsman makes a series of recommendations focused on enhancing the regulatory framework and enhancing information, education, compliance and support.

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