

A warning for growers, hostel owners and labour-hire contractors on wage rates

6 March 2017

The Fair Work Ombudsman is urging horticulture businesses to be vigilant when engaging workers from labour-hire operators this harvest season by making themselves aware of the minimum rates of pay for casual pickers under the Horticulture Award.

“This season, I want to remind business operators who employ backpackers that they should be wary of ‘offers’ of labour from labour-hire providers who turn up at their properties offering to supply workers.”

Workers that are engaged on piece rates must be provided with a piecework agreement in writing that is set at a rate that would allow an average competent worker to pick enough to earn 15 per cent above the hourly minimum.

The Fair Work Ombudsman fully recognises the importance of piece rate arrangements to the Horticulture Sector. When used lawfully, piece rates can provide significant benefits to both growers and workers.

However some dodgy labour-hire operators set piece rates so low that is not possible for workers to pick or pack enough fruit to earn the minimum hourly rate.

“As one can reasonably assume the labour hire provider is taking a cut of the agreement with the grower, the question growers need to ask is ‘how much are the workers receiving?’”

Fair Work Ombudsman Natalie James encouraged business operators to contact the agency if they receive offers of labour at suspiciously low rates. Ms James says the deliberate exploitation of young, vulnerable backpackers – many of them from non-English speaking backgrounds with little understanding of their workplace rights – is totally unacceptable.

“Growers should ensure that people working on their farms, whether directly employed or via a labour-hire provider, are receiving their correct entitlements,” Ms James said.

“Growers and hostel operators who enter into contracts with unscrupulous labour-hire companies can be held liable, as an accessory under the Fair Work Act, if they knowingly enter into sub-standard and illegal arrangements.”

“We recognise the important role that is played in the Horticulture sector by labour hire operators and commend the Recruitment and Consulting Services Association and the National Farmers Federation on progressing an industry-led initiative designed to enhance compliance in this sector through the development of a certification scheme for labour providers in the horticultural sector. “

The FWO has expressed its support for this initiative and has offered advice and assistance to the certification scheme's pilot. If the initiative is successful, the certification scheme will provide growers with greater confidence their workers are being paid their lawful entitlements.

Ms James said the majority of growers do the right thing, though the Fair Work Ombudsman has found recurring trends when it comes to overseas worker exploitation.

New arrivals to Australia can also find themselves being ripped-off on transport or accommodation costs after entering into dodgy arrangements with unscrupulous labour-hire providers.

It is not uncommon for some backpackers to be met by the labour hire provider at a regional airport or bus station and promised work, accommodation and transport. They are then driven to accommodation via an ATM and asked to provide money in advance for bond, transport and accommodation costs.

The most common issue encountered by the Fair Work Ombudsman is in relation to rates of pay or piece work agreements.

“If growers are approached by a labour-hire provider with rates that seem to be too good to be true, they probably are,” Ms James said.

Ms James said the agency had welcomed the cooperation of the industry in addressing these important issues during the course of the Harvest Trail Inquiry.

“I welcome the positive response from many growers and their industry associations to the work we have been doing over the last three years as part of our Harvest Trail Inquiry and appreciate the ongoing support of the key Industry associations such as the NFF

and others with our ongoing work in Horticulture," Ms James said.

"We have noticed a very pleasing improvement in the employment practices for Harvest Trail workers in a number of crop sectors across the country, particularly in places such as the Caboolture region in Queensland where Strawberries are grown, Cherry growing regions and Blueberry growing regions around Coffs harbour.

"Addressing and preventing the deliberate exploitation of young people and visa holders who work in low-skilled positions is a priority for the Fair Work Ombudsman and we encourage any growers who believe they may have been approached by unscrupulous labour-hire operator to contact the agency.

"As part of the FWO's commitment to assisting growers and workers in this important sector, the FWO has recently partnered with Growcom through the Agency's Community Engagement Grant Program. This partnership will see Growcom working with the FWO and within its own network to educate and assist growers to ensure that workers in the industry are receiving the right entitlements," Ms James said.

Editor's note:

This year the Fair Work Ombudsman will continue several initiatives aimed at protecting the rights of overseas and seasonal workers and ensuring employers, hostel owners and labour-hire operators understand and comply with their obligations.

A three-year Harvest Trail initiative by the Agency's Regional Services Team is reviewing compliance within the fruit and vegetable growing industry across Australia as a result of persistent requests for assistance and underpayments in the horticulture sector. Results will be published this year.

In 2016 the Fair Work Ombudsman established a Migrant Worker Strategy and Engagement Branch. The new branch is working to coordinate enhanced efforts to reach out to migrant workers in their own language, in a way that is relevant within their own experience and culture, and to help them understand their workplace rights and obligations.

In 2016 the Fair Work Ombudsman's Overseas Worker's Team released an [Inquiry report \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/october-2016/20161015-417-inquiry-media-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/october-2016/20161015-417-inquiry-media-release) after it concluded its year-long review of the wages and conditions of overseas workers in Australia on the 417 Working Holiday visa following a spike in requests for assistance from backpackers over the preceding three year period.

Any employee or employer seeking advice about pay and working conditions can call the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au for advice.

A free interpreter service is available on 13 14 50 and information on the website has been translated into 27 different languages.

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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Media inquiries:

Eithne Johnston, Media Adviser

Mobile: 0439 835 855

eithne.johnston@fwo.gov.au (<mailto:eithne.johnston@fwo.gov.au>)

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Fair Work Online: www.fairwork.gov.au

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