

\$134,000 in penalties after Melbourne CBD outlets exploit “marginalised and disadvantaged” workers

12 June 2018

The Fair Work Ombudsman has secured more than \$134,000 in penalties against the former operators of a café and a retail outlet in the Melbourne CBD, after three overseas workers were paid as little as \$11 an hour.

Photoplus Australia Pty Ltd, which formerly operated the Photoplus mobile phone accessory and photography retail outlet on Swanston Street, has been penalised \$68,520 and Choi Brothers Pty Ltd, which formerly operated a café trading as Bread Kingdom on Lonsdale Street, has been penalised \$55,404.

The penalties were imposed in the Federal Circuit Court after the companies admitted underpaying two employees at the Photoplus outlet and a third employee who worked at both Photoplus and Bread Kingdom a total of \$44,950 for various periods of work in 2016.

Melbourne man Seung-Geun Choi, who was an owner and sole director of both businesses at the time, was also penalised an additional \$10,896 after admitting he was involved in record-keeping and pay slip contraventions.

Mr Choi also failed to provide employees with a Fair Work Information Statement when they commenced employment.

The penalties are a result of an investigation and legal action by the Fair Work Ombudsman.

Fair Work Ombudsman inspectors investigated after workers made underpayment allegations and found three workers had been paid flat rates of between \$11 and \$14 for all hours worked.

Inspectors discovered a Chinese worker who was on a 417 working holiday visa and an international student from Taiwan were underpaid \$6920 and \$12,578 respectively for work at the Photoplus outlet.

The third worker, a Chinese national who was on a 462 work and holiday visa, was underpaid \$25,452 for work at both the Photoplus and Bread Kingdom outlets.

Under the applicable Awards, they were entitled to receive minimum rates as much as \$19 per hour, plus casual loadings, for ordinary hours and higher rates for weekend and public holiday work.

The workers have now been back-paid in full.

In his judgment on the matter, Judge Philip Burchardt found that the employees were “marginalised and disadvantaged workers” whose “disempowerment in the work place is self-evident”.

Judge Burchardt described the underpayments as “very significant”, given that the employees received approximately only half of their entitlements.

The contraventions occurred despite the Fair Work Ombudsman identifying pay slip issues at Photoplus Australia during a proactive audit campaign in 2013 and providing the business with information on how to comply with these laws. Mr Choi made a commitment at the time, on behalf of Photoplus Australia, to comply with those obligations.

Judge Burchardt found that the “[e]vents of 2013 should have put them on notice of the minimum obligations and caused the respondents to take steps to check and comply with them”.

Judge Burchardt found that the contraventions relating to record keeping and pay slips were “plainly deliberate”. He found that the underpayment contraventions were “reckless” and that all other contraventions “should have been avoided”.

Judge Burchardt said there was a need to impose penalties that “send a clear message” that such contraventions will “give rise to serious sanctions”.

Fair Work Ombudsman Natalie James says the outcome of the matter makes it clear that failing to take action to comply with workplace laws after being put-on-notice is serious conduct with significant consequences.

“These operators were underpaying workers in not one but two Melbourne businesses,” Ms James said.

“If you are so confident as to involve yourself in multiple ventures, you should be capable of checking the rules that apply to

employing workers in those businesses and applying them, not demonstrating the sort of reckless disregard seen here.

“It is not a legitimate or lawful approach to pass the burden of businesses’ financial circumstances on to marginalised and disadvantaged workers.

“Businesses need to understand that we do come back and check that our advice is being followed. Operators who ignore the agency and continue to operate unlawfully can expect to find themselves in court.”

Ms James says business operators should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has introduced significantly higher penalties for a range of breaches, including serious record-keeping and pay slip breaches.

Employers and employees can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. Small business callers can opt to receive priority service via the Small Business Helpline and a free interpreter service is available on 13 14 50.

The Fair Work Ombudsman has also recently launched a Small Business Showcase - www.fairwork.gov.au/smallbizshowcase (<http://www.fairwork.gov.au/smallbizshowcase>) - which is a virtual hub providing a wealth of resources for small businesses seeking information about their workplace obligations.

Resources available include the Pay and Conditions Tool (PACT), which provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

The Fair Work Ombudsman last year released the ‘Record My Hours’ smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>), which uses geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

“We see far too many examples of records that are either deliberately misleading or sub-standard and the app is a valuable back-up for workers when employers have failed to meet their record-keeping obligations,” Ms James said.

The Fair Work Ombudsman’s popular [Anonymous Report function](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool) (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool>), available in 16 languages other than English, allows visa-holders to report workplace concerns anonymously to the agency in their own language.

The Fair Work Ombudsman recently published an [open letter](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170925-international-students-release) (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170925-international-students-release>) to international students to encourage them to seek free help from the agency if they experience any issues while working in Australia.

“We are seeking to raise awareness among international students that in line with an agreement between the Fair Work Ombudsman and the Department of Immigration and Border Protection, you can seek our assistance without fear of your visa being cancelled, even if you’ve worked more hours than you should have under your visa,” Ms James said.

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:

Ryan Pedler, Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

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

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