

Melbourne company facing court over allegations relating to a 7-Eleven outlet and Ramen restaurant

2 March 2018

The Fair Work Ombudsman has commenced legal action against the former franchisee of a 7-Eleven retail outlet in the Melbourne CBD for allegedly exploiting three international students through a cash-back scheme.

Facing Court are Xia Jing Qi Pty Ltd, which operated a 7-Eleven retail store on William Street until March 2017, and the store's former manager, Ai Ling "Irene" Lin.

It is alleged that after 7-Eleven head office set up a high-tech payroll system in 2016 aimed at ensuring employees were paid lawful minimum rates, the company and Ms Lin tried to disguise underpayments of three employees by requiring them to pay back thousands of dollars in wages.

The three employees were Chinese students, aged between 21 and 24, who were in Australia on student visas. Ms Lin, from Taiwan, was also in Australia on a student visa.

From 2016, Xia Jing Qi was required by 7-Eleven Head Office to use a biometric system that recorded hours of work by scanning employees' fingerprints to sign in and out, with Head Office then processing the payroll.

It is alleged Ms Lin told the three employees in late 2015 they would be paid through this payroll system but then specified a weekly sum for each of the workers to pay back via a safe box in the store or to Ms Lin's bank account.

It is alleged that after returning this portion of their wages, the employees were left with hourly rates ranging from \$8.53 to \$26.52.

Under the General Retail Industry Award 2010, the employees were allegedly entitled to ordinary hourly rates including casual loading of up to \$24.30, up to \$38.88 on Sundays and up to \$48.60 on public holidays.

The three employees were allegedly underpaid a total of \$6674 for various periods of work between November 2015 and October 2016. They have now been back-paid.

It is alleged that Xia Jing Qi also contravened workplace laws by providing the Fair Work Ombudsman with false or misleading records in relation to the 7-Eleven outlet.

The matter is the eleventh legal action by the Fair Work Ombudsman against a 7-Eleven franchisee. More than \$1 million in penalties have been ordered in 7-Eleven cases to date.

The Fair Work Ombudsman has also commenced a second litigation against Xia Jing Qi Pty Ltd, as well as the company's sole director Jing Qi Xia, for allegedly underpaying an overseas worker at Ajisen Ramen in the Melbourne Central Shopping Centre.

The company and Ms Xia allegedly underpaid an employee who was in Australia on a 417 working holiday visa by a total of \$9616.

It is alleged she was paid \$11.50 per hour between May and October 2016, before being paid just \$3.98 per hour in her final week of work.

The rates were allegedly significantly below the minimum hourly rate, casual loading, and penalty rates she was entitled to under the Restaurant Industry Award 2010.

The worker has now been back-paid.

Fair Work Ombudsman Natalie James says the use of cash-back schemes requiring workers to pay back part of their wages is a serious form of exploitation.

"We encourage anyone with information about cash-back schemes to come forward and assist us in our investigations."

Xia Jing Qi Pty Ltd faces penalties of up to \$54,000 per contravention in each of the matters, while Ms Lin and Ms Xia each face maximum penalties of up to \$10,800 per contravention.

An injunction restraining the company from underpaying retail and restaurant employees in future is also being sought. If the injunction is granted, the company could face contempt of court proceedings for any further contravention proven in court.

The matters are listed for a penalty hearing in the Federal Circuit Court in Melbourne on 5 October 2018.

Ms James said it was concerning that in both matters an owner or manager had allegedly been involved in underpaying visa holders from overseas backgrounds.

“The lawful obligations to pay minimum wage rates and keep accurate employment records apply to all employers in Australia – in relation to all employees – and are not negotiable,” she said.

“We know that workers from overseas backgrounds may be reluctant to speak-up or may be unaware of their rights. We make no apologies for targeting businesses who seek to take advantage of these vulnerabilities.”

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace.

Small business operators can opt to receive priority service and a free interpreter service is available on 13 14 50.

NOTE: Xia Jing Qi Pty Ltd no longer owns or operates the William Street 7-Eleven store in Melbourne. The Fair Work Ombudsman makes no allegations against the current operator.

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) .

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

matthew.raggatt@fwo.gov.au (mailto:matthew.raggatt@fwo.gov.au)

Page reference No: 8122

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.