

Massage parlour operator faces court

NOTE (18 April 2019): This media release initially incorrectly stated that the trading name of the two massage parlours was 'Yin's Chinese Massage'. The media release has been updated to reflect that the correct trading name is 'Yin's Chinese Traditional Massage'.

11 April 2019

The Fair Work Ombudsman has commenced legal action against a Victorian massage parlour operator, alleging it underpaid a Chinese worker more than \$13,000 and provided false records to inspectors.

Facing the Federal Circuit Court is Austop Natural Therapy and Supplies Pty Ltd, which operates a massage parlour trading as 'Yin's Chinese Traditional Massage' in Bacchus Marsh and formerly operated a massage parlour under the same trading name in Ballarat. The FWO is also taking action against company director Yusen Yin and company secretary Wenhua Liu, alleging they were involved in the underpayments.

In addition, the Fair Work Ombudsman is taking action against the accounting firm engaged by the company, Keith Golding & Associates Pty Ltd, alleging it was involved in the company's false-records breaches, under accessorial liability laws.

Between December 2016 and July 2017, Austop allegedly paid the employee a percentage of the total price of each massage she performed at its Ballarat business, rather than paying her an hourly rate of pay according to her entitlements under the Hair and Beauty Industry Award 2010.

This resulted in alleged underpayment of the employee's ordinary hourly rates, overtime rates, weekend and public holiday penalty rates, superannuation and annual leave entitlements. The company also allegedly failed to ensure she did not work on more than six consecutive days.

Fair Work Ombudsman Sandra Parker said that inspectors discovered the alleged breaches following contact from the worker, who was in Australia on a subclass 462 Work and Holiday Visa.

"We prioritise any requests for assistance from migrant workers, who can be particularly vulnerable due to language or cultural barriers and may not be aware of their workplace rights. All employees in Australia have the same rights at work, regardless of citizenship or visa status, and we encourage anyone with concerns about their pay to contact us," Ms Parker said.

The FWO alleges that Austop Natural Therapy and Supplies breached workplace laws by failing to issue pay slips to staff. It is further alleged that the company and Keith Golding & Associates provided inspectors with records (including pay slips) they knew to be false or misleading.

"The Fair Work Ombudsman will use accessorial liability laws to hold professional services firms to account if they are involved in breaching workplace laws. Third parties such as accountants should be aware that they can be ordered by a court to pay employees' unpaid wages and entitlements, as well as penalties, if found to be involved," Ms Parker said.

Keith Golding & Associates Pty Ltd faces a maximum penalty of up to \$21,000 per breach. Ms Yin and Ms Liu face penalties of up to \$12,600 per contravention and the maximum penalty for Austop Natural Therapy and Supplies Pty Ltd is up to \$63,000 per contravention.

The employee was allegedly underpaid a total of \$13,522, with a small fraction of the alleged underpayment remaining outstanding.

The FWO will seek a court order requiring the company to display a workplace notice detailing information about lawful employee entitlements and how to contact us.

A directions hearing is listed in the Federal Circuit Court in Melbourne on 30 April, 2019.

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. A free interpreter service is available on 13 14 50.

NOTE: The Fair Work Ombudsman makes no allegations against the current operators of Yin's Chinese Traditional Massage in Ballarat.

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Fair Work Online: www.fairwork.gov.au

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