

\$335,664 in penalties for underpaying workers at 7-Eleven outlet and restaurant

(“#twitter”)

18 January 2019

The Fair Work Ombudsman has secured \$335,664 in penalties against a Melbourne company and two individuals for underpaying Chinese workers at a 7-Eleven franchise on William Street and a Japanese restaurant in Melbourne’s CBD .

The Federal Circuit Court today penalised Xia Jing Qi Pty Ltd, which operated the 7-Eleven outlet until March 2017, \$154,225 for requiring three international students to repay part of their wages in an unlawful cashback scheme.

The company was penalised a further \$145,800 for underpaying a migrant worker at an Ajisen Ramen franchise in the Melbourne Central shopping centre.

Former manager Ai Ling “Irene” Lin has also been penalised \$9,590 for her involvement in the 7-Eleven convenience store breaches, and the company’s director Jing Qi Xia, who has a Chinese background, penalised \$26,049 for her involvement in the restaurant breaches.

The three workers underpaid at the 7-Eleven store were from China and aged between 21 and 24 while employed with the company. Ms Lin, from Taiwan, was also in Australia on a student visa.

Following public exposure of 7-Eleven underpayments in 2015, the company and Ms Lin tried to disguise underpayments of three employees by requiring them to pay back thousands of dollars in wages.

Ms Lin told the three employees in late 2015 they would be paid through the payroll system but then specified a weekly sum for each of the workers to pay back via a safe drop box in the 7-Eleven store or to Ms Lin’s bank account.

After returning this portion of their wages, the employees were left with hourly rates ranging from \$8.53 to \$26.52, leading to various underpayments of their ordinary hourly rates, casual loading, and weekend and public holiday penalty rate entitlements.

The three employees were underpaid a total of \$6,674 for various periods of work between November 2015 and October 2016. They were back-paid in August 2017.

The worker underpaid at the Ajisen Ramen restaurant was also from China and in Australia on a 462 working holiday visa. She was underpaid \$9,616, after being paid \$11.50 per hour between May and October 2016 and then amounts equating to just \$3.98 per hour in her final week of work, significantly below the minimum hourly rate, casual loading and penalty rates she was entitled to.

The underpayments left the worker struggling to meet living expenses despite working four to six days per week. The worker was back-paid in August 2017.

In her judgment, Judge Norah Hartnett said the use of the cash back scheme at the 7-Eleven store was “particularly egregious”.

“[I]t involved a deception of 7-Eleven head office and circumvented attempts by head office to stamp out the underpayment of employees by 7-Eleven franchisees,” Judge Hartnett said.

“The Court recognises that conduct such as implementing a system requiring employees to repay wages they are owed, and making, keeping and producing false records to disguise employees’ true employment situation, is reprehensible conduct and denies to all employees the minimum wage standards that they, in Australia, should expect and are entitled to.”

In relation to the Ajisen Ramen breaches, Judge Hartnett said the conduct of the company and Ms Xia was “deliberate and grave”.

“It was only in circumstances where the [Fair Work Ombudsman] had independently uncovered the truth, that the [company and Ms Xia] admitted to the underpayments.”

Acting Fair Work Ombudsman Kristen Hannah said that employers who exploit migrant workers will be discovered and met with serious legal consequences.

“The Fair Work Ombudsman will not tolerate any employers requiring any workers to pay back any of their wages. This cash back scheme was particularly deplorable as it undercut migrant workers, who can be vulnerable due to language and cultural barriers, or are reluctant to speak up.”

“All workers in Australia have the same rights at work, regardless of citizenship. We will continue to take enforcement action when businesses undercut migrant workers. We have an agreement with the Department of Home Affairs where visa holders can contact us for help without fear of their visa being cancelled,” Ms Hannah said.

The Court also found that Xia Jing Qi Pty Ltd breached record-keeping laws by providing false records to Fair Work inspectors during its investigation of the 7-Eleven convenience store.

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. The Fair Work Ombudsman has an agreement with the Department of Home Affairs where visa holders can [contact us for help \(www.fairwork.gov.au/find-help-for/visa-holders-migrants/visa-holders-and-migrants\)](http://www.fairwork.gov.au/find-help-for/visa-holders-migrants/visa-holders-and-migrants) without fear of their visa being cancelled.

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.

Background:

Including this matter, the FWO has secured \$1,818,923 in penalties in matters involving 7-Eleven franchisees. Details of the other matters are as follows:

- [Hao Chen, Xue Jing and Bosen Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/april-2011/20110427-bosen\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/april-2011/20110427-bosen) in relation to stores at Melbourne and Geelong (combined penalties of \$150,000)
- [Mubin UI Haider \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150804-haider-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150804-haider-penalty) in relation to a store in Brisbane (\$6,970 penalty)
- [Harmandeep Singh Sarkaria and Amritsaria Four Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160502-amritsaria-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160502-amritsaria-penalty) in relation to a store in Sydney (combined penalties \$214,200)
- [Haiyao Xu, Yiran Gu and Hiyi Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160705-hiyi-penalty-and-eu\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160705-hiyi-penalty-and-eu) in relation to a store in Melbourne (combined penalties of \$150,000)
- [Jason Yuan, Viplus Pty Ltd and Vipper Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/april-2018/20180410-vipper-and-viplus-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/april-2018/20180410-vipper-and-viplus-mr) in relation to two stores in Brisbane (combined penalties of \$192,961)
- [Sheng-Chieh Lo and Mai Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160621-mai-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160621-mai-penalty) in relation to a store in Brisbane (combined penalties of \$408,348)
- [Jim Chien-Ching Chang and JS Top Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170725-js-top-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170725-js-top-penalty) in relation to a store in Brisbane (combined penalties of \$168,000)
- [Avinash Pratap Singh and S & A Enterprises \(QLD\) Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180605-s-and-a-enterprises-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180605-s-and-a-enterprises-penalty) in relation to a store in Brisbane (combined penalties of \$192,780)
- [Madhav Ponnada and Balaji Australia Pty Ltd](http://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180605-s-and-a-enterprises-penalty) in relation to a store in Brisbane (combined penalties of \$180,000)

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