

Chinese student underpaid nearly \$13,000

5 July 2019

A Sydney horticulture labour-hire company will back-pay \$12,933 to a Chinese student after a Fair Work Ombudsman investigation uncovered multiple breaches of workplace laws.

Cherries Farm Employment Agency Pty Ltd, based in Burwood, and its director Ms Hsin-Jung Hsieh have signed a Court-Enforceable Undertaking (EU) after admitting to underpaying the student between July 2017 and April last year. Ms Hsieh is also of Chinese background.

The worker, aged in her late 20s during her employment, was in Australia on a student visa. She was employed by Cherries Farm to pack and sort vegetables.

Fair Work inspectors found that Cherries Farm paid the student a cash-in-hand rate of \$15 per hour. Under the Food, Beverage and Tobacco Manufacturing Award, she was entitled to gross hourly payments of \$23.51 for a base rate including casual loading, up to \$35.27 on Saturdays and up to \$47.02 for overtime hours.

Cherries Farm had also created false or misleading records in order to disguise the cash payments.

Fair Work Ombudsman Sandra Parker said Cherries Farm's conduct was an attempt to circumvent paying the student employee her lawful rates.

"Paying cash-in-hand rates to employees below what they're entitled to under their award is illegal and we won't hesitate to take action when we see this type of conduct," Ms Parker said.

"These arrangements often take advantage of potentially vulnerable workers, such as international students, who may not know about their workplace rights in Australia."

Under the EU, Cherries Farm has committed to changing its business practices to ensure long-term compliance with Australia's workplace laws. It will also engage independent auditors to check if any other employees across all businesses it supplies labour to have not been receiving their correct entitlements. These audits will take place in 2019 and 2020.

In addition to back-paying the worker, it will also issue her an apology on its social media channels.

Cherries Farm will also make a contrition payment of \$5,000 to the Commonwealth Government's Consolidated Revenue Fund.

"Improving compliance with workplace laws in the horticulture industry is a priority for us and we encourage any workers with concerns about their pay or conditions to contact us," Ms Parker said.

Information for those in the horticulture sector can be found at www.fairwork.gov.au/horticulture (www.fairwork.gov.au/horticulture) . Last year, the FWO released the findings of its Harvest Trail Inquiry report (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/november-2018/20181122-harvest-trail-inquiry-media-release>) , which detailed widespread breaches of the Fair Work Act. The FWO is now working closely with industry stakeholders to implement the recommendations of the report.

The Fair Work Ombudsman has an agreement with the Department of Home Affairs where visa holders can ask for our help without fear of their visa being cancelled.

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.

Download the [Cherries Farm Employment Agency Pty Ltd EU \(DOCX 169.7KB\)](https://www.fairwork.gov.au/ArticleDocuments/1416/cherries-farm-pty-ltd-enforceable-undertaking.docx.aspx) (<https://www.fairwork.gov.au/ArticleDocuments/1416/cherries-farm-pty-ltd-enforceable-undertaking.docx.aspx>) (PDF 1.2MB) (<https://www.fairwork.gov.au/ArticleDocuments/1416/cherries-farm-pty-ltd-enforceable-undertaking.pdf.aspx>)

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Fair Work Online: www.fairwork.gov.au

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