

Software companies sign up to FWO scrutiny

28 May 2019

Two Sydney businesses have back-paid two visa holders a total of \$34,429 as part of a Court-Enforceable Undertaking (EU) with the Fair Work Ombudsman.

Fair Work Inspectors investigated Silverwater-based POSnet Pty Ltd and ECNEsoft Pty Ltd following requests for assistance from two Korean nationals, each aged in their 20s.

The two companies and their Director, Mr Bum Soo Lee, provide point of sale software and equipment for restaurants and retail providers.

Inspectors found the companies paid unlawfully low flat rates of between \$6 and \$24 to the two workers, who were each employed for 12 months between July 2016 to October 2017.

Inspectors found that POSnet breached the National Minimum Wage Order and its annual leave pay obligations, as well as failing to provide pay in lieu of notice of termination.

POSnet also unlawfully engaged its underpaid worker as an intern for the first five months, and paid them flat hourly rates of between \$6 and \$11 during this period.

ECNEsoft's workplace breaches included underpaying its worker the minimum rates for ordinary hours, overtime and public holiday hours, and failing to pay annual leave loading, owed under the Clerks Private Sector Award.

The POSnet worker, who was in Australia on a 417 working holiday visa, was underpaid \$13,356. Mr Lee, a Korean national, recruited the POSnet worker while he was in Korea.

The ECNEsoft worker, in Australia on a 485 temporary graduate visa, was underpaid \$21,072.

Fair Work Ombudsman Sandra Parker said the Court-Enforceable Undertaking rectified the underpayments and ensured extensive future scrutiny for Mr Lee's companies going forward.

"We have no tolerance for employers who think they can pay unlawfully low flat rates of pay to migrant workers. A court-enforceable undertaking means that a company will not only have to pay back the money that is owed to their employees, but will also face ongoing close scrutiny by the FWO."

"Australia's lawful rates of pay do not change because of visa status and any workers with concerns should contact the Fair Work Ombudsman," Ms Parker said.

Under the EU, the two companies must engage an external professional to complete audits of the pay and conditions of all employees, one in 2019 and the second in 2020.

Mr Lee is required to check the pay and conditions of all workers in the nine other companies he directs. Any underpayments must be rectified and reported to the FWO.

The two companies will also make a combined contrition payment of \$5,000 to the Commonwealth Government's Consolidated Revenue Fund.

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Download the [POSnet and ECNEsoft Enforceable Undertaking \(DOCX 166.7KB\)](https://www.fairwork.gov.au/ArticleDocuments/1416/posnet-and-ecnesoft-enforceable-undertaking.docx.aspx) (<https://www.fairwork.gov.au/ArticleDocuments/1416/posnet-and-ecnesoft-enforceable-undertaking.docx.aspx>) (PDF 340KB) (<https://www.fairwork.gov.au/ArticleDocuments/1416/posnet-and-ecnesoft-enforceable-undertaking.pdf.aspx>)

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