

Kids clothing retailer faces court

13 September 2019

The Fair Work Ombudsman has commenced court action against a retailer that allegedly underpaid four Chinese migrants over \$140,000 and breached Protecting Vulnerable Worker laws, including by committing serious contraventions and hindering-or-obstructing Fair Work inspectors.

Blue Sky Kids Land Pty Ltd, which operates children's clothing stores in Sydney, and operated stores in Canberra at the time of the alleged contraventions, and directors Guo Dong Gu and Fei Rong Yang, are facing the Federal Court.

The four employees, who were employed as retail workers in the stores, were women in their 40s who speak limited English. Fair Work inspectors discovered the alleged underpayment of the workers, when investigating a request for assistance from one of them.

It is alleged that some of the contraventions – relating to record-keeping failures, non-issuing of pay slips and paying rates as low as \$10 an hour – are serious contraventions under the Protecting Vulnerable Workers laws. It is the first time the regulator has alleged a breach of the new provision of hindering or obstructing a Fair Work Inspector. It is alleged that during the Fair Work Ombudsman's investigation, Blue Sky Kids Land and Mr Gu ordered a Canberra store be closed so that inspectors could not conduct a site visit.

It is also alleged that the company and Ms Yang obstructed an inspector by ordering the deletion of timesheets.

Fair Work Ombudsman Sandra Parker said that increased maximum penalties were brought in following community concerns about worker exploitation in Australia.

"Employers are on notice that the Fair Work Ombudsman is making full use of the Protecting Vulnerable Workers laws to ensure that any individuals or companies who commit serious contraventions are held to account," Ms Parker said.

"We remind employers that maximum penalties for serious contraventions of workplace laws are \$630,000 per breach for a company and \$126,000 for an individual, 10-times the penalties which would ordinarily apply, and urge them to contact us for free advice and assistance."

Between October 2015 and June 2018, the four workers were allegedly underpaid wage and penalty rates, and not paid superannuation. One of the workers was not paid annual leave. Individual underpayments ranging from \$16,007 to \$47,285.

It is also alleged that inspectors were provided with false records and an employee was threatened with dismissal for speaking to an inspector, unless she agreed to be engaged as a contractor. A second company operated by Mr Gu and Ms Yang, Q Fay Trading Pty Ltd was allegedly involved in provision of false records.

In addition to penalties, the FWO is seeking a Court order requiring Blue Sky Kids Land, Mr Gu and Ms Yang to back-pay the four workers in full. Orders requiring an independent audit, the display of workplace notices and the completion of education courses are also being sought.

A directions hearing is listed in the Federal Court in Sydney on 14 October 2019.

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