

Taiwanese students allegedly underpaid

21 January 2021

The total underpayment amounts were rectified on 13 January 2021.

15 January 2021

The Fair Work Ombudsman has commenced legal action in the Federal Court against operators of the '85 Degrees' café brand, alleging young Taiwanese students who worked in Sydney were underpaid under the guise of a purported internship arrangement.

The FWO alleges that Taiwanese company Comestibles Master Co Ltd, the franchisor of the '85 Degrees' café brand in Taiwan, underpaid eight Taiwanese students a total of \$429,393.18 over a period of just under 12 months from July 2016 to June 2017.

The regulator also alleges that 85 Degrees Coffee Australia Pty Ltd, which operates factories and cafes under the 85 Degrees brand in Sydney where the students performed work, was an accessory to some of the contraventions that occurred between April and June 2017.

The eight affected students were aged between 20 to 22 at the time and spoke little English. The FWO alleges that each of these eight young Taiwanese workers was underpaid more than \$50,000 over a period of just one year.

Fair Work Ombudsman Sandra Parker said the alleged underpayment of young visa holders in Australia is a serious matter.

"All franchisors setting up operations in Australia must abide by our laws and pay the lawful minimum pay rates that apply to all workers, regardless of nationality or visa status. Any workers with concerns about their pay or entitlements should contact us," Ms Parker said.

"The FWO has developed a range of free resources (<http://www.fairwork.gov.au/unpaidwork>) for employers, employees and higher education institutions to promote a clear understanding about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act."

The regulator investigated the matter after receiving requests for assistance from the young Taiwanese students.

It is alleged they were students at the Taipei City University of Science and Technology in Taiwan and came to Australia on working-holiday visas under an 'internship' arrangement between Comestibles Master Co Ltd and the University, to work in 85 Degrees factories and retail stores in Sydney operated by 85 Degrees Coffee Australia Pty Ltd.

It is alleged that four students worked at an 85 Degrees cake factory in St Peters preparing and packing cakes and cleaning; two worked at 85 Degrees bread factory in Hurstville preparing and packing bread products; one worked across the St Peters factory and the 85 Degrees café outlet in Hurstville and one worked at the 85 Degrees café outlet on George Street in the Sydney CBD.

It is alleged that the students performed work for the company and were entitled to be paid the minimum rates and entitlements under the applicable Awards, including minimum wage rates, overtime rates, penalty rates, annual leave entitlements and superannuation.

It is alleged the employees worked 60 to 70 hours per week and that each of the employees was underpaid between \$50,213 and \$58,248. Contraventions of record-keeping and pay slip laws are also alleged.

It is also alleged that 85 Degrees Coffee Australia Pty Ltd contravened a term of an [Enforceable Undertaking](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/july-2015/20150707-85-degrees-coffee-eu-press-release) (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/july-2015/20150707-85-degrees-coffee-eu-press-release) it entered into with FWO in 2015 in respect of contraventions relating to other Chinese and Taiwanese visa holders.

The FWO alleges that the contraventions relating to the students in 2016 to 2017 occurred despite 85 Degrees Coffee Australia Pty having previously been the subject of the Enforceable Undertaking in 2015.

"The Fair Work Ombudsman enters into Enforceable Undertakings with a person where it believes that they will fully comply with the terms. Where there are alleged breaches of an Enforceable Undertaking, the FWO will not hesitate to take the business to court," Ms Parker said.

The FWO is seeking a court order requiring the companies to rectify the alleged underpayments in full. Comestibles Masters Co Ltd and 85 Degrees Coffee Australia Pty Ltd face penalties of up to \$54,000 per contravention for multiple alleged contraventions of workplace laws.

A directions hearing will be listed in the Federal Court in Sydney in due course.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance. An interpreter service is available on 13 14 50.

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Fair Work Online: www.fairwork.gov.au

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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