

Café operators face court for allegedly paying international students just \$8 an hour

2 April 2014

The operators of a café in Melbourne are to face court over allegations they paid foreign students as little as \$8 an hour.

A total of 22 employees were allegedly underpaid more than \$83,000.

Many are international students from non-English speaking backgrounds – a third of them aged under 21.

Facing court is Primeage Pty Ltd, which operates a Gloria Jeans franchise at Caulfield and company directors Tsinam Fu, of Clayton and Ping Ostrovskih, of Rowville.

The Fair Work Ombudsman has commenced legal proceedings in the Federal Circuit Court in Melbourne.

Court documents allege that the casual employees were underpaid a total of \$83,566 between July, 2011 and April, 2013.

They were allegedly paid flat rates of \$8 to \$10 an hour.

The Fair Work Ombudsman claims this has resulted in underpayment of their minimum hourly rates, weekend and public holiday penalty rates, casual loadings, minimum shift pay and a clothing allowance.

Breaches of laws relating to issuing of pay slips, providing meal breaks and keeping employment records are also being alleged.

The Fair Work Ombudsman discovered the alleged underpayments when it investigated a complaint lodged by one of the employees.

Individual amounts owing to the employees range from a low \$45 up to \$17,103, Court documents allege.

Mr Fu and Ms Ostrovskih face maximum penalties ranging from \$3300 to \$10,200 per breach and Primeage Pty Ltd faces penalties ranging from \$16,500 to \$51,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order for the company to rectify the underpayments in full.

A directions hearing is scheduled for April 7.

Fair Work Ombudsman Natalie James says the employer's failure to rectify the alleged underpayments - despite efforts by inspectors to resolve the matter - was a significant factor in the decision to put the matter into Court.

Ms James says the quantum of the alleged underpayment and the involvement of vulnerable workers are also significant factors.

In recognition of the fact that overseas workers can be particularly vulnerable to exploitation, or require specialised assistance, the Fair Work Ombudsman has recently established an Overseas Workers' Team.

The Team provides assistance to:

- Workers in Australia on temporary visas that have work rights,
- Newly-arrived migrants who may not be aware of Australia's employment and workplace laws, and
- Newly-arrived migrants who, through their visa conditions, have committed to remain with their sponsoring employer for a period of time.

In 2012-13, the Fair Work Ombudsman received 2018 complaints from visa-holders alleging their workplace rights had been compromised – a 61 per cent increase on the 1250 complaints received in 2011-12.

More than \$1.4 million in underpaid wages and entitlements was recouped for visa-holders last financial year.

"The Fair Work Ombudsman is keen to ensure that overseas workers in Australia are treated with dignity and respect and accorded the same rights as local workers. Indeed, that is the law," Ms James said.

"We seek to guard against employer practices that deliberately take advantage of language difficulties, lack of knowledge of the law, unfamiliarity with government agencies and dependency created by the significant power imbalance when an overseas worker is reliant on the employer signing paperwork."

The Fair Work Ombudsman has a suite of resources to assist overseas workers as part of its Culturally and Linguistically Diverse strategy, including YouTube videos in 14 languages.

A free interpreter service for those from non-English speaking backgrounds is available by calling 13 14 50 and information about workplace laws is translated into 27 different languages at www.fairwork.gov.au/languages (www.fairwork.gov.au/contact-us/language-help) .

NB - The largest penalty awarded by the Courts in a matter initiated by the Fair Work Ombudsman is \$343,860 - delivered against a Perth cleaning company and its manager in September, 2013.

In that case, the Court found they had deliberately underpaid six cleaners - including five overseas workers from Taiwan, Hong Kong, New Zealand and Ireland - and as well as the penalty, instructed that the employees be reimbursed more than \$22,000 in underpaid wages.

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Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

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

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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