

Fair Work Ombudsman to review entitlements of overseas visa-holders on working holidays

4 August 2014

The Fair Work Ombudsman has announced it will conduct a review of the wages and conditions of overseas workers in Australia on the 417 Working Holiday Visa.

The 417 is a temporary visa issued by the Department of Immigration & Border Protection (DIPB) to young people who want to holiday and work in Australia for up to two years.

To be eligible to apply for a second year, 417 visa-holders must undertake 88 days specified work in a designated regional area and in certain industries in their first year.

Allegations have been raised with the Fair Work Ombudsman that the 88-day requirement is being exploited by some unscrupulous operators to attract free labour.

As part of its intelligence-gathering, the Fair Work Ombudsman will look at:

- Analysing DIPB data involving businesses most commonly facilitating the extension (second year) of working holiday visas,
- Engaging with community and support groups for overseas workers, and
- Working with employer associations, unions and other key stakeholders to gain further insight into anomalies in both industries and geographic locations.

The review will be conducted by the Fair Work Ombudsman's Overseas Workers Team (OWT), established in July, 2012, in recognition that overseas workers can be vulnerable and/or require special assistance.

A report will be published at the conclusion of the inquiry.

Ongoing and new investigations into alleged exploitation of 417 and other visa holders will continue simultaneously and legal action will be considered for serious matters.

Since July, 2009 (when the Fair Work Ombudsman was created), the Agency has commenced 51 litigations involving overseas workers. This represents about 20 per cent of all our legal activity for this period.

Restaurants account for the highest number of litigations involving overseas workers, with 10 matters placed before the courts, followed by retail (6), fast food (4) and cleaning and maritime (3 each).

The 51 litigations related to alleged underpayment of overseas workers totalling more than \$3.8 million and included 10 cases involving 417 visa-holders

The largest penalty awarded by the courts in a matter initiated by the Fair Work Ombudsman is \$343,860.

This was a case against a Perth cleaning company and its manager who deliberately underpaid six cleaners, including five overseas workers from Taiwan, Hong Kong, New Zealand and Ireland who were in Australia on 417 working holiday visas. (see attachment)

Figures obtained by the Fair Work Ombudsman show that more than 128,000 417 working holiday visas were issued in the first half of the 2013-14 financial year.

Of these, one in five was a second-year visa, a 30 per cent increase over the same period the previous year.

The integrity of such a scheme is therefore important, and the Fair Work Ombudsman is committed to ensuring their working entitlements whilst in Australia are upheld.

Discovery of non-compliance - such as non-payment of wages, underpayment of wages, employees making payments to employers and third parties in return for documentation supporting their second visa application and exploitation of employees in exchange for accommodation programs – will be dealt with on a case by case basis throughout the review.

In the first phase of activity, the Fair Work Ombudsman will undertake a detailed analysis of all available data to establish the employer, industry and geographical areas of most interest.

The review team will then engage with culturally and linguistically diverse communities and key stakeholders, gathering specific and

comprehensive information alongside testing areas of most concern.

Field visits and communication with identified employers are likely late this year.

In the past two financial years, the Fair Work Ombudsman has received about 2000 requests for assistance from workers identifying themselves as 417 visa-holders.

This accounts for 1 in 3 requests from all visa-holders.

In 2011-12, the Fair Work Ombudsman recouped \$67,000 in underpaid entitlements for 77 417 visa-holders.

This increased to \$262,000 for 201 417 visa-holders in 2012-13 and \$345,000 for 309 417 visa-holders last financial year (2013-14).

The three-year total of \$673,000 back-pay for 417 visa-holders is just over 20 per cent of the total \$3.2 million recouped for all visa-holders (1669) during the same period.

Most requests for assistance from 417 visa-holders come from those working in the accommodation and food services industry, followed by agriculture, forestry and fishing.

In recognition that the horticulture sector also attracts a large number of 417 backpackers, the Fair Work Ombudsman is currently running a comprehensive three-year program we have called the Harvest Trail, to ensure seasonal workers receive their lawful minimum entitlements.

Additionally, there are active investigations in regional Victoria and NSW involving the employment of 417 visa-holders by a range of labour-hire agencies and contractors.

The Fair Work Ombudsman is also pro-active in other industries known to employ significant numbers of overseas workers – including hospitality, cleaning, 24-hour convenience stores and trolley collecting.

Since July 1, 2013, the Fair Work Ombudsman has had an expanded role to monitor 457 visa-holder sponsorship obligations.

The role is limited to ensure that 457 visa-holders are receiving their “nominated salary” and performing the functions of their “nominated position”.

If monitoring reveals that employers are not meeting their sponsorship obligations, they are referred to the Department of Immigration & Border Protection (DIBP).

The Fair Work Ombudsman's Overseas Workers' Team has conducted monitoring in Darwin, Newcastle, Wagga, Penrith, Broome, Bunbury, Kalgoorlie and the Gold Coast.

Further monitoring has commenced, or is planned, for each of the nation's capital cities.

Last financial year, (2013-14) the Fair Work Ombudsman monitored the employment of 1902 457 visa-holders by 1029 employing entities.

A total of 243 employing entities have been referred to DIBP because of concerns that nominated salary or position obligations are not being met for a total of 338 visa-holders.

The top three industries where concerns have been identified by Fair Work inspectors are accommodation and food services (22.63 percent per cent), retail trade (10.70 percent) and health care and social assistance (9.05 per cent).

The Fair Work Ombudsman also finalised 404 requests for assistance from 457 visa-holders last financial year and recouped \$315,000 for employees found to have been underpaid.

In total, \$1.1 million was returned to almost 700 visa-holders in 2013-14.

Legal proceedings were commenced in 10 matters involving visa-holders last financial year, four of them relating specifically to 457 visa-holders.

Contact with the Fair Work Ombudsman from overseas workers comes most frequently from South Korean, Chinese, Vietnamese and Japanese workers.

The Fair Work Ombudsman is conscious that an overseas worker's vulnerability whilst in Australia can be increased by factors such as the remoteness of working locations and dependence on the employer to obtain eligibility for a second-year visa.

Overseas workers account for five per cent of the Fair Work Ombudsman's total work, but the Agency is devoting considerable resources to ensuring their workplace rights are protected, as non-compliance leads to lawful businesses being at a competitive disadvantage.

Our experience suggests that overseas workers are often not fully aware of their workplace rights under Australian laws – and youth, language and cultural barriers can also create difficulties for them.

With the numbers of overseas workers in Australia expected to increase over the next five years (projected figures ranging from 2.5 – 3.5 million), the Fair Work Ombudsman expects an increasing number of vulnerable workers will seek our assistance.

And we are keen to hear from any overseas worker who is concerned their workplace rights may have been compromised. We want them to call us on our Fair Work Infoline (13 13 94). While we may not act on every single call, recognising that some people seek anonymity, we do want the intelligence; we do want to hear their stories.

The Fair Work Ombudsman is keen to ensure that all those who work in Australia are treated with dignity and respect and accorded the same rights as local workers. Indeed, that is the law.

We want the work experience of an overseas worker in Australia to be a positive one. And we simply aim to ensure that those who go to work each day are paid fairly for their labour.

The best defence for an overseas worker against being underpaid or treated unfairly is to know their rights. They have the same workplace rights as any other worker in Australia.

Information to assist both employers and employees from culturally and linguistically diverse backgrounds has been translated into 26 languages on the Fair Work Ombudsman website at www.fairwork.gov.au.

Overseas workers, or employers, seeking advice can also call 13 14 50 if they need an interpreter.

The Fair Work Ombudsman has fact sheets tailored to overseas workers and international students on its website.

From July 1, 2013 to 30 June, 2014, a fact sheet about visa holders and overseas worker workplace rights and entitlements had been downloaded more than 13,000 times and a fact sheet for international students had been downloaded more than 6000 times.

The Agency has also produced videos in 14 different languages and posted them on YouTube.

Further, we run workplace rights presentations and seminars with relevant groups, distribute in-language posters and brochures to migrant resource centres and community groups and pro-actively engage with ethnic media.

From time to time, we receive intelligence which suggests overseas workers in some sectors are being paid as little as \$8 an hour. To that end, we are constantly looking at new and innovative ways to educate overseas workers about their workplace rights, particularly minimum pay rates.

Recently, we ran a month-long campaign whereby the Fair Work Ombudsman placed advertisements on websites in South Korea we know that South Korean nationals access before they come to Australia, in a bid to help them understand their rights before they get here.

Additionally, the OWT provides assistance to:

- Workers in Australia on temporary visas who 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.

The OWT is currently undertaking a Strategic Enforcement Activity in relation to the broader labour supply chain practices and the subsequent drivers of non-compliance with the Fair Work Act 2009 within the Australian meat industry.

The inquiry is conducting an analysis of how contracting supply arrangements are made and whether there has been a growth of contracting supply chains within this industry (and if so why).

This includes a study of the economic drivers behind the supply chain practices and the engagement of overseas workers in the meat industry.

This analysis will include identifying impacts these practices have on local employment and social trends (eg housing) in geographical locations in which the meat industry are located.

Reporting will also include other areas of impact on the broader Australian economy, eg the 'cash economy'.

The OWT is working with Unions and other Commonwealth Departments and stakeholders in the inquiry and the Fair Work Ombudsman will produce a report detailing its findings, enforcement activities and broader recommendations at the conclusion.

Fair Work Ombudsman Tips for Overseas workers

- The national minimum wage in Australia from July 1, 2014 is \$16.87 an hour, or \$640.90 a week.
- Casuals covered by the minimum wage get an extra 25 per cent.
- You should get a Fair Work Information Statement when you start a new job.
- Keep your own records of hours worked and wages received.
- Make sure you record the name of the business you work for and its ABN.

- Ask for offers of employment and conditions of employment in writing.
- You are entitled to receive a pay slip within one day of being paid.
- You can ask your boss about minimum wages and entitlements – or you can check with the Fair Work Ombudsman.

Natalie James

Fair Work Ombudsman

Find out more:

- [Record penalties for deliberate underpayment of foreign cleaners in Perth \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/september-2013/20130907-housekeeping-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/september-2013/20130907-housekeeping-penalty)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.