

Chinese workers allegedly underpaid hundreds of thousands of dollars

21 January 2014

A Chinese cook at a take-away noodle bar at Dubbo in regional NSW was underpaid almost \$200,000 in less than three years, the Fair Work Ombudsman has alleged.

Documents filed in the Federal Circuit Court in Sydney claim the male 457 Visa-holder was short-changed a total of \$189,225 when he worked at the Macquarie St shop.

The man was one of six Chinese employees underpaid a total of \$642,311 by W.X.Z. Enterprises Pty Ltd at four of its stores in NSW and Queensland between July, 2010 and March, 2013, the Fair Work Ombudsman alleges.

Court papers also allege:

- A male supervisor and a female cook at a noodle bar on William Street, Bathurst, were underpaid \$129,314 and \$125,605 respectively,
- A female cook at a noodle bar on Bourbong Street, Bundaberg, was underpaid \$92,086, and
- A female and a male cook at a shop on Summer Street, Orange, were underpaid \$88,034 and \$18,047 respectively.

The Fair Work Ombudsman has commenced legal proceedings against W.X.Z Enterprises and NSW men Xin Tai Xu and Xin Chun Xu, who were allegedly involved in managing the company's operations and underpaying the workers.

The Agency is seeking penalties and a Court Order for back-payment of the money allegedly owed to the employees.

Court documents allege W.X.Z. Enterprises paid the six employees a flat weekly wage as low as \$530, despite them generally working up to seven days a week and often more than 60 hours a week.

It is alleged the workers were underpaid their minimum hourly rates, penalty rates for weekend, public holiday and overtime work and annual and personal/carer's leave entitlements.

Company record-keeping and pay slips contraventions are also alleged.

Inspectors discovered the alleged underpayments when they investigated complaints lodged by employees.

Fair Work Ombudsman Natalie James says the significant amounts of money involved for vulnerable, foreign workers and a failure by the employer to rectify the alleged underpayments were significant factors in the Agency's decision to take legal action.

W.X.Z Enterprises faces penalties of up to \$51,000 per contravention and Xin Tai Xu and Xin Chun Xu each face penalties up to \$10,200 per contravention.

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.

Ms James says the Fair Work Ombudsman is constantly looking to new and innovative ways to ensure foreign workers in Australia receive their lawful entitlements.

Last financial year, the regulator recovered \$1.4 million in underpaid entitlements for 2018 overseas employees identified as Visa holders generally and \$371,000 for 259 complainants who identified as 457 Visa holders.

Employers and employees seeking assistance on workplace rights and obligations can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

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/language-help/default)

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Page reference No: 2623

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