

Company reimburses international students and apologises for underpaying their wages

22 March 2014

The operator of an Asian grocery store in Adelaide recently warned about non-payment of wages and poor record-keeping has again been found to be underpaying its staff by thousands of dollars.

In the latest case, seven staff – five of them international students – were short-changed more than \$23,000 – some of it for shifts they worked, but were never paid for.

As a result, the Fair Work Ombudsman has required KYB Pty Ltd - trading as Mariana Market, on Grote St - to reimburse all outstanding entitlements and immediately overhaul its workplace practices.

The seven staff - three of them aged between 18 and 20 - will also get a written letter of apology from the company acknowledging its “sincere regret” for breaching federal workplace laws and giving a commitment that it won’t happen again.

In November, 2012 the company received a Letter of Caution from the Fair Work Ombudsman after it assessed a complaint from an employee.

At that time, KYB was required to reimburse more than \$456 to an employee who had not been paid for more than 56 hours’ work over a five-day period.

It was also put on notice about the need to comply with its record-keeping, pay-slip, minimum wage and minimum engagement of casual employee obligations.

The Fair Work Ombudsman received additional complaints against KYB last year and subsequently identified that seven more employees had been underpaid over \$23,200 for work performed between March and June, 2013.

The individual underpayment amounts ranged from \$1813 to \$5924 – and included reimbursement for up to 12 hours’ “unpaid work trials” required by the employer of each staff member.

The Fair Work Ombudsman concluded that it was “not a genuine trial arrangement”, noting that the employees performed productive work and duties, including stacking shelves, moving goods throughout the store, cleaning, making juices and serving customers.

Employees were initially told they would be paid \$8 an hour for the first 20 shifts and then \$16 to \$18 an hour thereafter, but they would only be paid if they successfully completed a full month of work.

Fair Work inspectors found that on more than one occasion employees were not paid at all for work performed and did not get their minimum hourly rate, casual loading or penalty rates for weekend shifts.

As an alternative to litigation, KYB has signed an Enforceable Undertaking with the Fair Work Ombudsman, in which commits to a range of measures to revamp its workplace practices.

These include:

- Putting policies and procedures in place to ensure ongoing compliance with the Fair Work Act and the General Retail Industry Award 2010,
- Ensuring timely payment of wages to employees at weekly or fortnightly intervals,
- Ensuring employees receive the correct minimum hourly rate and other entitlements such as penalty rates and overtime,
- Keeping accurate and complete records for all employees and issuing payslips within one day of pay day,
- Organising workplace relations training each year for the next three years for managers responsible for human resources, recruitment and payroll functions,
- Engaging an independent, external accountant to audit its compliance with workplace laws at six-monthly intervals for three years, and
- Placing a Public Notice in the Adelaide Advertiser newspaper and on the staff notice board in the workplace detailing the contraventions, its apology for the conduct and corrective actions required.

Fair Work Ombudsman Natalie James says the Enforceable Undertaking is in line with the Agency’s commitment to proactively improve compliance rates in the retail industry.

And in recognition of the fact that overseas workers can be particularly vulnerable to exploitation, or require specialised assistance, the Fair Work Ombudsman has established an Overseas Workers' Team comprising 16 Fair Work inspectors.

Ms James says that 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 from visa-holders 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,” she said.

The Fair Work Ombudsman has a suite of resources to assist overseas workers as part of its Culturally and Linguistically Diverse strategy. 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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Find out more:

- [KYB Pty Ltd Enforceable Undertaking \(PDF 4.9MB\) \(www.fairwork.gov.au/ArticleDocuments/722/Enforceable-Undertaking-KYB-Pty-Ltd.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/722/Enforceable-Undertaking-KYB-Pty-Ltd.pdf.aspx)

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