

## Migration agency fined \$140,000 for underpaying Chinese workers

21 March 2014

The operators of a Melbourne migration agency have been fined a total of \$140,790 for underpaying five young, Chinese immigrant workers tens of thousands of dollars.

The agency offers services to international students seeking Australian visas and entry into educational institutions.

Liu Ming Pan - the owner-operator of the Australian Chinese Centre for International Education - has been fined \$22,079.

And Pan's private company Australia China Trading Investment Consultancy Group Pty Ltd has been penalised a further \$118,711.

The penalties, imposed in the Federal Circuit Court in Melbourne, follow legal action by the Fair Work Ombudsman.

The five employees, who worked as clerks at the centre, were underpaid a total of \$76,186 between 2009 and 2013.

Aged in their 20s, they are now permanent residents in Australia.

The workers were paid flat hourly rates of \$9 to \$10 for 'trial and training periods' of two to four months. After that, their flat hourly rates ranged from \$13.74 to \$16.

Under the Clerks Private Sector Modern Award 2010, the employees were entitled to be paid more than \$16 an hour for all work performed, with higher rates payable for overtime and public holiday work.

Annual and personal leave entitlements were also underpaid.

The Fair Work Ombudsman discovered the underpayments, as well as pay slip breaches, when it investigated complaints lodged by employees.

The underpayments have been rectified in full.

Handing down his decision, Judge John O'Sullivan said there had been a failure to provide basic and important entitlements to employees in a disadvantaged and vulnerable position.

"The employees were denied their statutory entitlements for an extended period and were only paid correctly when the (Fair Work Ombudsman) threatened to commence these proceedings," Judge O'Sullivan said.

Prior to the underpayments occurring, the Fair Work Ombudsman had previously informed Pan of the need to pay the employees Award minimum entitlements.

An earlier investigation into an underpayment complaint from another employee, a working visa holder from China, which was resolved by way of a voluntary back-payment.

Judge O'Sullivan found that there was evidence that Pan and the company were aware of previous contraventions and described the underpayments as "reckless".

"There is evidence of the conduct which is now admitted having occurred previously and the respondents having notice of their obligations, yet conduct in breach thereof continuing," he said.

Judge O'Sullivan said there was a need for specific and general deterrence.

"It is incumbent on employers to make all necessary enquiries to ascertain their employees' proper entitlements and pay their employees at the proper rates. There is no evidence that the respondents sought to do so," he said.

Fair Work Ombudsman Natalie James said the Court's decision sends a clear message that underpayment of vulnerable workers will not be tolerated.

"This employer had been put on notice of the need to pay employees their full lawful entitlements and is now facing the consequences of failing to do so," she said.

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.

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.

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," Ms James said.

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](http://www.fairwork.gov.au/languages) ([www.fairwork.gov.au/language-help/default](http://www.fairwork.gov.au/language-help/default))

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