

Businessman to face Court over claims overseas workers paid less than \$5 an hour

30 October 2014

The operator of a Darwin painting business is facing court action for allegedly paying young overseas workers less than \$5 an hour.

The Fair Work Ombudsman alleges Scott Aeron Davenport, whose business trades as Scott's Painting Service, paid three workers just \$450 for 13 days' work.

This equated to hourly rates of between \$4.62 and \$4.71.

A fourth worker was allegedly paid just \$300 for five days' work – an effective hourly rate of \$11.54.

The workers, all French nationals aged between 21 and 25, were in Australia on 417 working holiday visas when they were allegedly underpaid between December last year and January this year.

Mr Davenport engaged the workers to perform painting and labouring duties at a local college.

It is alleged that under the Building and Construction General On-Site Award they were entitled to be paid more than \$22 an hour for normal hours and more than \$38 an hour for weekend work.

It is alleged the four workers were underpaid a total of \$5940, with individual underpayments ranging from \$451 to \$1889.

The Fair Work Ombudsman investigated after the workers sought help.

It is alleged that after initially co-operating with Fair Work inspectors and agreeing to rectify the underpayments, Mr Davenport stopped co-operating and failed to make any back-payments.

Mr Davenport also allegedly breached workplace laws by failing to respond to a Notice to Produce employment documents issued by Fair Work inspectors in March.

Under the Fair Work Act, business operators must comply with Notices to Produce issued by Fair Work inspectors or make a court application for a review if they are seeking to challenge a Notice.

“Our inspectors attempted to engage with this business operator to try to resolve the payment matters by agreement and obtain the documents required for our investigation, but were not able to secure sufficient co-operation,” Fair Work Ombudsman Natalie James says.

Ms James says the involvement of vulnerable overseas workers is also a concerning feature of the matter.

“Young and overseas workers can be vulnerable if they are reluctant to complain or not fully aware of their workplace rights, so we place a high priority on taking action to protect their workplace rights,” she said.

Mr Davenport faces maximum penalties of up to \$10,200 per breach.

The Fair Work Ombudsman is also seeking a Court Order for Mr Davenport to comply with the Notice to Produce employment documents.

A directions hearing will be held in the Federal Circuit Court in Darwin on December 1.

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

A free interpreter service is available by calling 13 14 50.

Helpful online tools include PayCheck Plus to assist business owners and employees determine the correct award and minimum wages for their industry, templates for pay slips and time-and-wages records and a range of fact sheets on workplace entitlements.

Dedicated website resources for small businesses include a Fair Work Handbook and tips for new employers about hiring staff.

Ms James says the Fair Work Ombudsman is making compliance easier for businesses by continually building on the information available on its website.

“Small businesses often don't have the benefit of in-house human resources and payroll staff, so we place a high priority on assisting

them,” she said.

“Equipping people with the information they need helps to create fair and productive workplaces, as well as ensuring a level playing field for all.”

The Fair Work Ombudsman’s small business helpline – which launched in December to provide tailored advice to small business people – has now responded to more than 100,000 calls.

Small businesses can sign up to a regular newsletter from the Fair Work Ombudsman with helpful workplace tips and information.

The Fair Work Ombudsman has recently announced a review of the wages and conditions of overseas workers in Australia on the 417 Working Holiday Visa (see [Fair Work Ombudsman to review entitlements of overseas visa-holders on working holidays \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review) media release).

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Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@fwo.gov.au)



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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

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