

Court action over \$16,000 underpayment of young migrant travel consultant

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A Melbourne travel services company which paid a young migrant consultant as little as \$9 an hour and told her she was a contractor will face court following an investigation by the Fair Work Ombudsman.

Facing legal proceedings in the Federal Circuit Court is Grandcity (GW) Travel & Tour Pty Ltd, which operates the Grandcity Tours travel agency at Glen Waverley.

Also facing Court is company director and majority owner Na Xu.

The Fair Work Ombudsman claims the company and Ms Xu breached sham contracting laws last year when they represented to a 24-year-old worker, a Chinese migrant, that she was an independent contractor operating her own business.

The company allegedly required the worker to sign a contractor agreement and paid her flat rates of between \$9 and \$11 an hour for the work she performed between January and September last year.

The Fair Work Ombudsman says the worker should have been classified as an employee, not a contractor.

Reasons include the level of direction and control the company had over her duties and when she was required to attend work.

The employee was allegedly short-changed a total of \$16,756 over an eight-month period as a result of being underpaid her minimum hourly rate, casual loadings and weekend and public holiday penalty rates.

Breaches of superannuation, record-keeping and pay slip laws are also alleged.

The Fair Work Ombudsman alleges that Ms Xu was aware of the difference between employees and contractors and of the workplace laws that require employees to be paid minimum wages and other employee entitlements.

The Agency has received previous employee complaints in relation to the Grandcity Group of companies operated by Ms Xu.

Last year the Fair Work Ombudsman issued Ms Xu a Letter of Caution in relation to another worker - also a young Chinese migrant - allegedly being misclassified as a contractor.

Ms Xu told Fair Work inspectors at the time she had engaged the worker as a contractor because she could not afford employee wage rates.

Ms Xu faces maximum penalties of up to \$10,200 per contravention, while Grandcity (GW) Travel & Tour faces penalties of up to \$51,000 per breach.

The Fair Work Ombudsman is also seeking Court orders for the company to back-pay the worker in full and to notify all workers engaged since October, 2012 of the outcome of the proceedings.

A directions hearing is listed for October 27.

Fair Work Ombudsman Natalie James says the Agency's previous contact with Ms Xu, the failure to rectify the most recent alleged underpayment and the involvement of a young, vulnerable worker were significant factors in the decision to commence legal action.

"We will be alleging in Court that Grandcity has not changed its business practices despite having been put on notice previously of the need to comply with workplace laws," Ms James said.

Ms James said all employers should be aware that simply calling a worker a 'contractor' and requiring them to obtain an ABN does not automatically make them a contractor under workplace laws.

"Where we suspect misclassification or sham contracting is occurring, we will look behind the often carefully drafted legal documents to determine the true state of affairs for affected workers," she said.

Ms James said contracting arrangements can be appropriate, but not as a mechanism to reduce payments to workers who are performing specified duties at specified times under direction from an employer.

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.

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