

Overseas students cautioned about offering to work long hours for low wages in cash

29 August 2015

The Fair Work Ombudsman today cautioned international students against offering to work for cash at rates well below the minimum wage.

Fair Work inspectors recently recovered more than \$12,000 for an international student who was underpaid while working for an Asian take-away food shop in Melbourne.

However, inspectors later discovered that the student – from Taiwan – had posted advertisements on social media indicating she would work for \$12 an hour cash-in-hand.

The employer, a Chinese national unaware of his obligations under Australian workplace laws, thought it was okay to pay a mutually-agreed flat rate.

Fair Work Ombudsman Natalie James says anecdotal evidence suggests students from non-English speaking backgrounds are offering to work for lower wages for more hours.

“We hear that they are motivated to do this as long as they are paid in cash and their employment records only equate to the maximum 40 hours a fortnight allowed under their visa,” she said.

Ms James says employers cannot undercut minimum wages, even if their employees offer to accept lower rates, and they must keep accurate time-and-wages records at all times.

When coming to Australia, international students make a declaration to the Department of Immigration and Border Protection (DIBP) that they have the financial capacity to pay for their tuition, living expenses and return home for themselves and any family with them.

DIBP makes it clear that work conditions offered as part of a student visa provide an opportunity for a “cultural experience” and to help improve language skills.

DIBP stipulates that international students should not rely on work to pay for their study and living expenses. Most students must not commence work before they have started their course, and must not work more than 40 hours a fortnight while their course is in session.

Ms James says enforcement action has been taken against the employer who underpaid the Taiwanese student – but the student has also been warned about continuing to advertise her availability to work at below-Award wage rates.

“International students offering to work for wages well below the minimum rate are breaching the integrity of the visa system, which allows them to be here, undermining our workplace laws and placing themselves in a potentially vulnerable position,” she said.

“Such action is obviously also counter-productive to our own efforts to uphold their minimum workplace rights.”

Ms James says the Fair Work Ombudsman set up a specialist Overseas Worker’s Team in mid-2012 to help combat the exploitation of overseas workers in Australia.

A dedicated Young Worker’s Team also focuses on this vulnerable cohort, and earlier this month the Agency announced a new program to foster relationships with international student bodies and multi-cultural communities via the [appointment of new Community Engagement Officers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150813-community-engagement-officers-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150813-community-engagement-officers-presser).

Ms James says international students, particularly those from non-English speaking backgrounds, can be vulnerable and it is important to raise awareness of their minimum entitlements.

As recently as May, the Fair Work Ombudsman ran a national social media campaign to alert international students to their workplace rights if they take a job whilst studying here.

There are almost 340,000 international students studying in Australia – more than 76,000 from China and 40,000-plus from India.

“Fair Work inspectors do encounter instances where international students are breaching their visa conditions by working more than 40

hours a fortnight," Ms James says.

"Some have told us they are scared that if they complain about being underpaid, their employer will report them to DIBP.

"There is no question that an employee in breach of visa conditions is putting themselves into a more vulnerable situation.

"Every employee in Australia is entitled to receive their minimum terms and conditions under the Fair Work Act, and while the Fair Work Ombudsman is not concerned with an employee's visa status, DIBP has power under the Migration Act to cancel a visa in certain circumstances.

"In our experience, international students who are primarily concerned about their visa status are reluctant to seek assistance or co-operate with us, and that significantly hampers our investigations."

Ms James says the Fair Work Ombudsman is now working closely with the Australian Border Force (ABF) in multi-agency operations targeting visa fraud, illegal work and the exploitation of foreign workers.

Under Taskforce Cadena, Government bodies are joined together and working more closely on intelligence gathering, disruption, enforcement and litigation.

"In situations where a person working in breach of their visa conditions reports wage fraud to us, they may still be liable to have their visa cancelled by DIBP," Ms James says.

DIBP treats each case individually and assesses each matter on its specific merits and circumstances. Cancellation on the basis of non-compliance with a visa condition is discretionary and DIBP will consider the circumstances under which the breach of the visa condition occurred.

The Fair Work Ombudsman understands that a visa-holder who is under consideration for visa cancellation is given the opportunity to provide reasons as to why their visa should not be cancelled and that a non-citizen whose visa is cancelled may apply for a review of that decision.

Visa-holders now represent about 11 per cent of the total number of employees seeking assistance from the Fair Work Ombudsman.

In 2014-15, the Agency recouped \$1.6 million for visa-holders, up from \$1.1 million the previous financial year.

Twenty-one of the matters filed in Court by the Fair Work Ombudsman last financial year involve visa-holders, up almost 50 per cent on the matters lodged the year before.

"Young workers and overseas workers can be at risk because they often are unaware of their rights and entitlements, and language and cultural barriers are often an issue for visa-holders as well," Ms James says.

"We have innovative, inter-active educational tools and resources on our website aimed specifically at these two cohorts.

"But we don't just aim to educate employees about their rights – just as much effort goes into raising awareness among employers about their workplace obligations.

"Increasingly we are working with employer organisations and major employers of young workers to build a culture of compliance with workplace laws to minimise the risk of underpayment."

Employers who have any uncertainty about whether their workplace practices are appropriate are encouraged to visit www.fairwork.gov.au or call the call the Fair Work Infoline on 13 13 94.

A free interpreter service is also available on 13 14 50, and information on the website is translated into 27 languages, including fact sheets tailored for international students.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

Information about DIBP visa requirements can be accessed at www.border.gov.au (<http://www.border.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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