

Growers, hostels, labour-hire contractors cautioned over backpacker, seasonal worker entitlements

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The Fair Work Ombudsman has issued a warning to growers, hostel owners and labour hire contractors that it will not tolerate the deliberate exploitation of backpackers and seasonal workers this summer.

The Agency has received fresh complaints about backpackers being lured to regional centres by dodgy labour-hire operators allegedly treating them poorly, bullying and sexually harassing them and ripping them off to the tune of hundreds of dollars.

The Fair Work Ombudsman revealed it is reviewing fresh reports against one operator who allegedly charges backpackers \$450 to find them jobs, and then pays them as little as 60 cents an hour to work on local farms.

The operator reportedly charges up to \$150 a week for backpackers to stay in sub-standard houses and caravans, with allegations of up to 32 people being accommodated in one home and 12 more sleeping in the garage.

Fair Work Ombudsman Executive Director Tom O'Shea says it is not the first time this particular operator has come to the Agency's attention, and he will come under further scrutiny following a formal complaint about his behaviour received from the local council.

Mr O'Shea says the deliberate exploitation of young, vulnerable backpackers – many of them from non-English speaking backgrounds with little understanding of their workplace rights – is totally unacceptable.

The Fair Work Ombudsman is currently running two programs aimed at protecting the rights of overseas and seasonal workers and ensuring employers, hostel owners and labour-hire operators understand and comply with their obligations.

A three-year Harvest Trail initiative by the Agency's Regional Services Team is reviewing compliance within the fruit and vegetable growing industry across Australia as a result of persistent complaints and underpayments in the horticulture sector.

Simultaneously, the Overseas Worker's Team is conducting a year-long review of the wages and conditions of overseas workers in Australia on the 417 Working Holiday visa following a spike in complaints from backpackers over the past three years.

Complaints to the Fair Work Ombudsman from seasonal workers and backpackers working on the harvest trail can be summarised as follows:

- Being ripped off on transport or accommodation costs – this is usually encountered through new arrivals agreeing to enter into arrangements with someone (normally an unscrupulous labour hire provider) who meets them at a regional airport or bus depot and promises work, accommodation and transport for a certain sum of money. They are then normally driven to the accommodation via an ATM and asked to provide money in advance for bond, transport and accommodation costs. They are also promised work, normally at a farm that has some sort of arrangement with the so-called labour hire provider. The work is normally at a piece rate so low that it is not possible to pick enough fruit to make at least the minimum hourly rate required. When they complain or raise the issue with the provider they may be bullied or told that they will not get their bond back, nor would they have their visa extension signed off.
- Often the complaints also relate to a dodgy provider who has advertised on a local or foreign website or social media and simply provides an offer of work fruit or vegetable picking and a mobile number to call.
- The Fair Work Ombudsman often receives complaints regarding sub-standard accommodation, or accommodation that is crowded and unliveable – these complaints are referred to local authorities such as the police, councils or even the fire service.
- Other issues include providers gouging or inflating expenses, such as transport.
- In some cases, the Fair Work Ombudsman has encountered situations where a person is virtually bonded to a particular provider on the basis that they have been told that they will not have their visa extensions signed unless they “see out the season with them”. These situations are often able to be addressed in conjunction with the local police and Department of Immigration and Border Protection (DIBP).
- The most common issue encountered by the Fair Work Ombudsman is in relation to rates of pay or piece work agreements. Often this relates to piece work agreements that do not provide a person with the opportunity, or ability, to pick the required amount of fruit to make at least more than the casual hourly rate under the Horticulture Award. The current hourly rate for a casual fruit or vegetable picker under the Horticulture Award is \$21.08.
- A piece work agreement, which must be provided to the worker in writing, needs to be set at a rate that would allow an average

competent worker to pick enough to earn 15 per cent above the hourly rate.

Against this background, Mr O'Shea says the Fair Work Ombudsman's clear message to growers is not to accept the "offers" of the dodgy labour hire providers who turn up at their properties offering to supply labour for less than \$21 an hour.

"We hold the growers responsible for ensuring that people working on their farms, whether directly employed or via a labour hire provider, are receiving the correct entitlements," he said.

"Growers should have alarm bells ringing if someone offers to provide them with labour for less than \$21 an hour.

"It should not be the case, and it's not fair that growers that are doing the right thing, and labour hire providers that are doing the right thing – should be competitively disadvantaged by the behaviour of the minority of dodgy operators.

"Growers who are doing the wrong thing need to be aware that they can be held liable, as an accessory under the Fair Work Act, if they knowingly enter into sub-standard and illegal arrangements with unscrupulous operators."

Similarly, Mr O'Shea says that hostel owners and operators should be aware they may be held liable if they enter into contracts with dodgy labour hire companies and then bond the backpacker to their hostel by only allowing the backpacker to work with that labour hire company.

"If hostel operators involve themselves with payments to backpackers through these questionable operators, they too may find themselves liable as an accessory if they knowingly enter into sub-standard and illegal arrangements," he said.

Tips for backpackers and seasonal workers to avoid being ripped off

Mr O'Shea said the Fair Work Ombudsman had a number of simple tips for backpackers and seasonal workers to ensure they don't get ripped off while working on the harvest trail.

- Don't enter into work arrangements with people who meet you at regional airports or bus depots. These people will approach you with promises of guaranteed work picking fruit or vegetables and accommodation and transport. If it sounds too good to be true, then it probably is!
- Don't respond to questionable advertisements where there is only a first name and a mobile phone number provided. Legitimate providers will advertise for workers appropriately.
- Know what you are worth. For work picking fruit or vegetables, or pruning, you should receive at least \$21.08 an hour on a casual hourly basis.
- If you are on a piece work agreement this should allow you to pick enough to make more than \$21.08 per hour if you are an average worker. If you are a very hard worker you can earn more than this.
- Know who you are working for – ask the question.
- Keep a diary of the hours you work, the places you work and the type of work you are doing.
- Take the time to find an ethical and legitimate provider that pays correctly and doesn't seek to rip you off! The Australian Government has established a Harvest Trail Guide. This guide seeks to link legitimate labour hire providers with growers and provides a range of other information across all regions of Australia. The guide is available at www.jobsearch.gov.au/harvesttrail (<http://www.jobsearch.gov.au/harvesttrail>) or by calling the National Harvest Trail hotline on 1800 062 332.
- Enjoy your working holiday in Australia – remember that the growers rely on visitors such as yourself to harvest their crops – they should treat you well and make sure you are not exploited.

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