

Teenage Chinese massage therapist allegedly underpaid \$21,000 after being convinced to work as contractor

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A teenage Chinese massage therapist was underpaid more than \$21,000 after being persuaded to work as an independent contractor instead of an employee, the Fair Work Ombudsman alleges.

The 19-year old, who spoke limited English, was paid a percentage of the cost of each massage she provided, when she should have received a minimum hourly wage.

Another male Chinese therapist, in his 20s, was also allegedly short-changed \$33,000.

As well as being underpaid, the Fair Work Ombudsman alleges the two therapists had money unlawfully deducted from their wages for being late for work.

It has commenced legal proceedings against the employer for sham contracting.

Facing court is Lu's Healthcare Pty Ltd, which operates massage centres in Melbourne's CBD, Richmond and Frankston.

Also facing legal action is business manager Kun Wang, of Melbourne.

The Fair Work Ombudsman claims Lu's Healthcare and Ms Wang breached workplace law when they convinced the two therapists to work under their own Australian Business Number (ABN).

The therapists were allegedly told that they would have to pay an "administrative fee" if they wanted to be employed using a Tax File Number (TFN).

The Fair Work Ombudsman says the two therapists should have been classified as employees and paid under the Health Professionals and Support Services Award 2010.

The two worked primarily at Lu's Healthcare Richmond at the Victoria Gardens shopping centre.

The Fair Work Ombudsman says neither was conducting their own business and Lu's Healthcare and Ms Wang exercised control over the way they performed their duties.

Court documents allege the workers should have been paid minimum hourly rates, a laundry allowance, casual loadings and penalty rates for overtime, shift, weekend and public holiday work.

It is further alleged that hundreds of dollars were unlawfully taken from their wages for being late for work – a breach of the business' formal 'Code of Conduct'.

The Code lists a range of transgressions for which certain amounts would be arbitrarily taken from their take-home pay.

Fines of up to \$100 applied for being late to work or absent without notice.

For a 'lack of passion or good hospitality', therapists could be fined \$50 – and for talking or speaking on the phone during a massage, they could lose their jobs.

Under a 'disturbance of the work environment' category, employees could be fined \$20 for 'noise making or playing around' and sleeping or lying on massage tables.

The punishment for 'resistance to hard work' was being 'put back into apprenticeship again'. The Code also stated that 'employees with other problems will undergo serious punishment'.

The Fair Work Ombudsman discovered the Code of Conduct, as well as the alleged underpayments, when it investigated complaints lodged by the two therapists.

The pair were allegedly underpaid a total of more than \$54,000 between December, 2011 and June, 2013. Record-keeping and pay slip laws were allegedly also breached.

Fair Work Ombudsman Natalie James says the significant amounts involved for vulnerable workers and the failure of the employer to co-operate with the Agency's investigation were significant factors in the decision to litigate.

The employees were only back-paid in December after court proceedings began.

“We are very conscious that there are a number of young and vulnerable employees in this industry and businesses need to be aware that there will be consequences if they blatantly contravene workplace laws,” she said.

Deductions from wages are generally unlawful if they are not authorised by the employee in accordance with workplace law and are not principally for the benefit of the employee.

“In this case, we will allege in Court that the deductions were arbitrary and used as a form of punishment, which is unlawful,” Ms James said.

“Employers also need to realise that classifying a worker as a contractor and asking them to obtain an ABN does not automatically make them a contractor in the eyes of the law.

“When our inspectors suspect misclassification or sham contracting is occurring, we will look carefully to determine the true state of affairs.”

Ms Wang was allegedly involved in Lu’s Healthcare committing several breaches of workplace laws. She faces possible penalties of up to \$10,200 per breach. The company faces maximum penalties of up to \$51,000 per breach.

A directions hearing is listed in the Federal Circuit Court in Melbourne on February 19.

Any employers or workers who have any uncertainty about whether practices at their workplace are appropriate can visit the Fair Work Ombudsman website at www.fairwork.gov.au.

Among the free resources are a series of Best Practice Guides on topics including effective dispute resolution and managing under-performance, which offer extensive advice on dealing with and managing issues at work.

Employers and employees can call 13 13 94. A free interpreter service 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>)

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