

Employer to face court for allegedly paying Italian backpacker just \$1.35 an hour

22 January 2015

A young Italian backpacker was allegedly paid less than \$2 an hour while working in Tasmania for an employer who recruited working holidaymakers wanting to stay in Australia for two years.

The Fair Work Ombudsman today announced it was taking legal action against the employer, who allegedly paid the backpacker just \$270 for four weeks' work – the equivalent of just \$1.35 an hour.

Facing court is Harold William Jackson, who owns and operates Harold's Glass and Hardware and the adjacent Rhythm & Vines café-and bakery in Queenstown.

The female Italian backpacker, in her 20s, allegedly agreed to work for Mr Jackson in September, 2013 after he promised to sign off on her second-year 417 visa application.

The 417 is a temporary visa issued by the Department of Immigration & Border Protection (DIPB) to young people who want to holiday and work in Australia for up to two years.

To be eligible to apply for a second year, 417 visa-holders must undertake 88 days' specified work in a designated regional area and in certain industries in their first year.

Mr Jackson allegedly also underpaid four other backpackers from the UK and Japan.

Documents lodged by the Fair Work Ombudsman with the Federal Circuit Court allege the backpackers worked for Mr Jackson for periods ranging from one week to four months and received irregular payments equivalent to rates of between \$2.43 and \$5.38 an hour.

Two of the backpackers were allegedly recruited through advertisements Mr Jackson placed on the Gumtree website stating that "88 day second year work visa sign off is available".

The five backpackers, all aged in their 20s, were allegedly underpaid a total of \$42,985. Individual underpayments allegedly range from \$1026 to \$19,097.

The Fair Work Ombudsman says the backpackers were entitled to be paid more than \$22 an hour for normal hours worked and up to \$32 an hour for some weekend work.

The backpackers were allegedly underpaid for various periods of time worked between July, 2013 and February, 2014.

Mr Jackson engaged them to perform duties including sales, cleaning, labouring and construction.

The Fair Work Ombudsman investigated the matter after receiving a complaint from one of the backpackers.

It is also alleged that Mr Jackson breached pay slip and record-keeping laws.

Fair Work Ombudsman Natalie James says inspectors made extensive efforts to engage with Mr Jackson to try to resolve the matter without going to court, but were unable to secure sufficient co-operation.

Mr Jackson allegedly told Fair Work inspectors that the backpackers were "guests" or "volunteers", rather than employees.

Mr Jackson also allegedly failed to respond to a contravention letter issued in June requesting that the underpayments be rectified.

He faces maximum penalties of up to \$10,200 per contravention.

The Fair Work Ombudsman is also seeking a Court Order for Mr Jackson to back-pay the workers in full.

Late last year, the Fair Work Ombudsman announced it was also commencing legal proceedings against a Darwin employer for allegedly paying backpackers on 417 working holiday visas less than \$5 an hour.

The Fair Work Ombudsman alleges Scott Aeron Davenport, whose business trades as Scott's Painting Service, paid three French nationals aged between 21 and 25 \$450 for 13 days' work – the equivalent 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.

Under the Building and Construction General On-Site Award, the Fair Work Ombudsman says 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.

Again, 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.

In August, 2014, the Fair Work Ombudsman announced it would conduct a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa.

Allegations have been raised with the Fair Work Ombudsman that the 88-day requirement is being exploited by some unscrupulous operators.

The Fair Work Ombudsman is now receiving more complaints from overseas visa-holders working in Australia than ever before.

“Complaints from 417 visa-holders have increased significantly – and the Fair Work Ombudsman has recently changed its operational processes to focus on employees who most need our intervention,” Ms James said today.

“While we have always had a strong focus in relation to visa-holders, we now give these vulnerable employees priority through the Overseas Workers' Team - and have invested significant resources in compliance and litigation activities.”

Between 2011-12 and 2013-14, complaints from visa-holders to the Fair Work Ombudsman increased by 165 per cent from 909 to 2625.

Complaints from 417 visa-holders were up 382 per cent from 216 to 1042.

Between July 1, 2011 and June 30, 2014, the Fair Work Ombudsman dealt with 5633 complaints from visa-holders and recovered more than \$3.2 million in outstanding wages and entitlements for them.

Between July 1, 2012 and June 30, 2014, the Agency finalised 22 legal cases involving overseas workers – representing about a quarter of all litigations concluded during this time period.

During the same period, 5000 overseas workers and visa-holders called the Fair Work Infoline for advice and assistance.

Of the overseas workers who have contacted the Fair Work Ombudsman in the past financial year seeking assistance, 58 per cent were male and 42 per cent female.

More than 35 per cent were aged between 26 and 30 and most were born in Korea, China, Germany, France and India.

The largest number of requests for assistance from overseas workers – 24 per cent, came from employees in the accommodation and food services sector.

Information provided to the Fair Work Ombudsman by DIPB shows that almost 50,000 second-year 417 visa applications were approved last financial year.

The top five countries now using this program are Taiwan, the United Kingdom, South Korea, Ireland and Italy.

The Director of the Fair Work Ombudsman's Overseas Workers' Team, Ms Carey Trundle, recently travelled to Cairns, Darwin and Alice Springs to meet with key stakeholders to gain intelligence as part of the 417 review.

As part of community engagement, employers, business groups, unions, local councils and police are being consulted.

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

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages.

Overseas workers can call 13 14 50 if they need interpreter services.

The Fair Work Ombudsman has fact sheets tailored to overseas workers and international students on its website.

The Agency has also produced videos in 14 different languages and posted them on YouTube to assist overseas workers understand their workplace rights in Australia.

The Fair Work Ombudsman supports compliant, productive and inclusive Australian workplaces by providing practical advice that is easy to access, understand and apply.

“Equipping people with the information they need encourages and empowers employees and employers to resolve issues in their workplace and build a culture of compliance, ensuring a level playing field for all.”

Underpinning the Fair Work Ombudsman's website tools and resources is its award-winning Small Business Helpline, where

employers can get advice they can rely on with confidence.

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