

Chinese workers short-changed \$36,000

4 June 2015

Chinese nationals working at an Adelaide take-away food shop were paid as little as \$12 an hour, a Fair Work Ombudsman investigation has revealed.

The overseas workers, some of them in Australia on the 417 working holiday visa, were short-changed almost \$36,000.

The Fair Work Ombudsman identified the underpayment during a spot check of the business, in the Rundle Mall precinct, last year.

The business, which has since voluntarily repaid the money owed, was audited as part of a national campaign focussed on the hospitality sector.

The employer, an immigrant who spoke limited English, communicated with Fair Work inspectors through an accountant.

He admitted never checking the correct wage rates applicable to the business.

The Fair Work Ombudsman found that employees were paid flat hourly rates ranging from \$12.33 to \$16.15 for food preparation, cleaning and customer service duties.

New staff started on lower rates of pay, while long-serving workers were paid more.

Calculations identified that 24 staff were underpaid a total of \$35,900 - an average of about \$1500 each - in 2013-2014.

One employee was underpaid almost \$4000.

"These workers should have been getting more than \$17 an hour, plus penalty rates for weekend and public holiday work," says Fair Work Ombudsman Natalie James.

However, inspectors decided against enforcement because the business has no history of non-compliance, co-operated with the investigation and promptly back-paid staff all outstanding entitlements.

"We're confident these underpayments were inadvertent and a result of the employer's lack of awareness of their obligations, rather than anything sinister," Ms James said.

"This is an example of our fair, reasonable and proportionate response to employers who admit their mistakes, fix them immediately and put systems in place to ensure the errors are not repeated in future."

Ms James says the case does, however, highlight the need for Adelaide business owners to ensure they are fully aware of their obligations to employees under federal workplace laws.

"Mistakes like this can add up over time, leaving an employer with a hefty bill for back-payment of wages they were not budgeting for," she said.

Other recent recoveries in Adelaide include:

- \$18,900 for two workers at a Hindmarsh wholesale business underpaid their minimum hourly rates and weekend penalty rates,
- \$8200 for a shop assistant at a Burnside retail store underpaid penalty rates for weekend work,
- \$6900 for an adult apprentice tradesman at a St Agnes business underpaid the minimum hourly rate, and
- \$5300 for eight workers at an Oaklands Park fast food business underpaid their minimum hourly rates and weekend penalty rates.

Ms James says all employees were reimbursed without the need for further enforcement action after Fair Work inspectors contacted the employers and explained their obligations.

Inspectors also assisted employers to put processes in place to ensure they comply with workplace laws in the future.

Ms James says the Fair Work Ombudsman is devoting considerable resources to ensuring overseas workers are treated fairly in Australia.

"We give these workers priority through our specialist Overseas Workers' Team, which was established in 2012 in recognition that overseas workers can be vulnerable to exploitation and require specialist assistance," she said.

The Overseas Workers' Team is currently conducting a review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa following a spike in requests for assistance from backpackers over the past three years.

A three-year Harvest Trail initiative by the Fair Work Ombudsman's Regional Services Team is reviewing compliance within the fruit and vegetable growing industry across Australia as a result of persistent requests for assistance from employees, including many visa holders.

Recently, the Agency commenced a social media campaign to inform up to 100,000 international students about their workplace rights by providing tips and advice in six languages. The advice provided has also been published at www.fairwork.gov.au/internationalstudents (<http://www.fairwork.gov.au/internationalstudents>) .

"We want the experience of an overseas worker in Australia to be a positive one. And we simply aim to ensure that all those who work here are treated with respect and accorded the same rights as local workers," Ms James said.

The Fair Work Ombudsman provides a range of assistance to help both workers and employers from culturally and linguistically diverse backgrounds understand Australia's workplace laws.

"Material on our website is translated into 27 languages and there is also a free interpreter service available for people seeking advice through our Infoline," Ms James said.

The Fair Work Ombudsman also has fact sheets tailored to overseas workers and international students on its website and has published YouTube videos in 14 languages.

Ms James says the Fair Work Ombudsman can assist employers with accurate, reliable information that is easy to access, understand and apply.

Online tools available at www.fairwork.gov.au include calculators to determine the correct award and minimum wages for employees, templates for pay slips and time-and-wages records and a range of Best Practice Guides.

Employers and employees seeking assistance can consult the range of free tools and resources available on the website, or call the Fair Work Infoline on 13 13 94. A free interpreter service is also available on 13 14 50.

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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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