

Blueberry farmer faces Court over alleged record-keeping failures for 417 visa-holders

17 June 2015

A blueberry farmer who employed dozens of overseas backpackers to pick his crop is to face Court for alleged serious record-keeping failures.

Fair Work Ombudsman inspectors discovered the farmer only kept a record of the workers' first names and how many buckets they picked.

The alleged contraventions were identified during a spot check of the NSW Mid-North Coast property last November.

The Sandy Beach farmer, Gurmakh Dosanjh, is to face the Federal Circuit Court in Sydney following legal proceedings initiated by the Fair Work Ombudsman.

Fair Work inspectors randomly audited the Morgan's Road blueberry farm as part of the Agency's three-year Harvest Trail project.

Most of the fruit-pickers were young overseas backpackers in Australia on the 417 working holiday visa, many from non-English speaking countries.

The majority had taken seasonal jobs in the horticulture industry in order to qualify for a 12-month extension to their visa.

Fair Work inspectors allege that the only record for 60 employees was a day book with the worker's first name and the tally of buckets picked.

The Fair Work Ombudsman also alleges Mr Dosanjh:

- Did not issue employees with pay-slips within one day of being paid, as required by workplace law, and
- Failed to have written piecework agreements in place for employees who were paid per-bucket.

Employers must keep employment records for all employees, including details of pay rates and hours worked and piece rates can only be applied if there is an agreement in writing signed by the employee.

Since the Harvest Trail project was launched in mid-2013, Fair Work inspectors have issued more than 40 on-the-spot fines to horticulture businesses for record-keeping breaches.

However, a decision was made to take Mr Dosanjh to Court because of the blatant nature of the alleged contraventions relating to a significant number of vulnerable employees.

"Failing to keep records is a very serious matter," Fair Work Ombudsman Natalie James says.

"The lack of proper records increases the risk of employee underpayments occurring.

"It also hampers the ability of inspectors to accurately determine if employees are being paid correctly."

Mr Dosanjh faces a maximum penalty of up to \$10,200 for failing to have written piecework agreements in place.

He also faces a maximum penalty of \$5100 each for three other alleged contraventions relating to record-keeping and pay-slips.

Ms James says the Fair Work Ombudsman is devoting considerable resources to ensuring the many farms around the country that rely heavily on labour from overseas workers are complying with workplace laws.

The Harvest Trail was launched in response to ongoing requests for assistance from employees in the horticulture sector and confusion among growers and labour-hire contractors about their workplace obligations.

"We are conscious many fruit pickers are young overseas workers, who may be vulnerable if they are not fully aware of their rights, are reluctant to complain or face language barriers," Ms James said.

"It's important we are proactive about ensuring they receive their full lawful entitlements."

In August last year, the Fair Work Ombudsman also commenced a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa after receiving allegations that some unscrupulous operators were exploiting backpackers.

Of all the requests for assistance received from visa-holders, 40 per cent are from 417 visa-holders.

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

An interpreter service is available on 13 14 50.

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

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