

\$228,000 penalty for business operator who thinks minimum pay rates are “just crazy”

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A Melbourne business operator has been fined more than \$228,000 after admitting she underpaid a vulnerable migrant employee because she thinks Australia's minimum pay rates are “just crazy”.

The Federal Circuit Court has imposed a penalty of \$35,496 against businesswoman Na Xu after she admitted responsibility for underpaying the employee \$19,567 over a period of just eight months.

Xu's travel services company Grandcity (GW) Travel & Tour Pty Ltd, which operates the Grandcity Tours travel agency at Glen Waverley, was fined a further \$192,840.

The penalties are the result of an investigation and legal action by the Fair Work Ombudsman.

Fair Work inspectors discovered the underpayment after receiving a request for assistance from a 24-year-old migrant from China.

The employee, who spoke limited English, was paid flat hourly rates of between \$9 and \$11 to work a casual travel consultant between January and September, 2013.

Under the General Retail Industry Award, the employee should have been paid more than \$21 for normal hours, plus penalty rates for weekend and public holiday work.

She was paid less than half of her total entitlements.

Xu and Grandcity also breached sham contracting laws by classifying the employee as an independent contractor.

Contraventions to record-keeping and pay-slip requirements were also identified.

During the Fair Work Ombudsman's investigation Xu rebuked Australia's minimum pay rates, stating that Australia's “minimum rate is crazy – triple the USA – just crazy”.

Xu only back-paid the employee and admitted her contraventions after the matter was put before the court.

The Fair Work Ombudsman presented evidence in court that Grandcity employees were under constant video surveillance and were discouraged from raising concerns about their employment.

An email sent to all Grandcity employees in 2013 advised that they could be easily replaced and stated that “the boss pays you to do the work and not to negotiate any work terms and conditions”.

Handing down his decision, Judge John O'Sullivan noted that employees of other Grandcity agencies run by Xu had previously complained about underpayment of wages and sham contracting.

Judge O'Sullivan found that Xu and Grandcity had deliberately exploited a vulnerable employee.

He found that the previous interaction with the Fair Work Ombudsman should have left Xu well aware of her obligations.

“The respondents have demonstrated a complete disregard for the minimum standards contained in the Fair Work Act and (Xu's) personal interpretation of minimum standards under workplace laws as ‘just crazy’ reinforces the need to demonstrate that compliance with minimum standards is not optional, it's the law,” Judge O'Sullivan said.

“I am not satisfied she has shown remorse. There is no evidence she has taken steps to ensure that no further breaches will occur. I also accept there is also a need for general deterrence and to ensure employers understand the consequences of seeking to avoid obligations under the Fair Work Act.”

Xu continues to operate several Grandcity Travel & Tours agencies in Melbourne, Sydney, Brisbane, Perth and China.

Fair Work Ombudsman Natalie James says a \$220,000-plus penalty sends a very clear message to Xu and other employers who deliberately set out to deprive employees of their basic entitlements - that it will not be tolerated.

“This employer's actions in knowingly trying to put in place an unlawful business model of engaging employees as contractors to avoid minimum pay rates is completely unacceptable,” Ms James said.

“Successful legal actions such as this also help to create a fair competitive environment for employers who are doing the right thing by creating a level playing field in relation to business costs.”

Ms James says employers should be aware that simply calling a worker a ‘contractor’ and requiring them to obtain an Australian Business Number (ABN) does not automatically make them a contractor under workplace laws.

She says contracting arrangements can be appropriate, but not as a mechanism to reduce payments to workers who are performing specified duties at specified times under direction from an employer.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

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