

7-Eleven store operators to face Court for allegedly paying employees as little as \$11 an hour

12 October 2015

The former owner-operators of a Melbourne 7-Eleven store will face court for allegedly underpaying 12 employees more than \$84,000.

The Fair Work Ombudsman claims the employees, including international students, were sometimes paid flat rates as low as \$11 an hour.

One worker was allegedly short-changed more than \$16,500 in the 12 months to the end of September last year.

Fair Work Ombudsman Natalie James today announced legal action against Balwyn North husband-and-wife Haiyao Xu and Yiran Gu and their company Hiyi Pty Ltd.

The couple owned and operated a 7-Eleven store on Royal Parade, Parkville, until it was sold earlier this year.

The store was one of 20 outlets targeted by Fair Work inspectors throughout Melbourne, Sydney and Brisbane late last year.

Ms Gu and Mr Xu currently own and operate another 7-Eleven store on the corner of Flinders and Spencer Streets in Melbourne's CBD.

It is also under investigation.

In the past six years, the Fair Work Ombudsman has recovered more than \$600,000 in underpaid wages and entitlements for 182 workers at 7-Eleven outlets.

7-Eleven is currently the subject of a national Inquiry by the Fair Work Ombudsman into allegations of systemic underpayments and false record-keeping practices.

The latest litigation is the fourth time the Agency has put a 7-Eleven operator before court since July, 2009.

Multiple breaches of workplace laws are being alleged.

Ms Gu and Mr Xu face maximum penalties of up to \$10,200 per breach and their company up to \$51,000 per contravention.

It is alleged the 12 casual employees were underpaid a total of \$84,047 between September, 2013 and September last year.

They were allegedly paid flat rates of between \$11 and \$17.31 an hour.

However, Ms James says they should have received more than \$22 for normal hours and up to \$37 an hour for some weekend, public holiday, night and overtime shifts.

Four of the employees were allegedly underpaid more than \$10,000.

Ms Gu and Mr Xu also allegedly made false entries into the 7-Eleven head office payroll system to make it appear the employees had been paid Award rates and that they had worked less hours than was actually the case.

Ms James said that while it was pleasing all but \$500 of the underpaid wages bill had now been rectified by the employer, legal action was initiated because of the alleged deliberate exploitation of vulnerable overseas workers.

Ms James says the Agency alleges the store operators were aware of their lawful obligations, but initially chose to ignore them and try to cover up their actions.

The Fair Work Ombudsman is seeking Court Orders aimed at ensuring Ms Gu, Mr Xu and Hiyi Pty Ltd comply with workplace laws in future.

The Agency is also requesting Orders that it be notified if they plan to sell their current 7-Eleven store or if they engage workers through any other business.

Ms James says such Orders will help focus the attention of Ms Gu and Mr Xu on the importance of complying with their workplace obligations.

A directions hearing is listed in the Federal Circuit Court in Melbourne on November 17.

Ms James says preliminary results from the Fair Work Ombudsman's Inquiry into 7-Eleven stores is concerning, with contraventions identified at most of the outlets recently targeted for investigation.

Last financial year the Agency filed two litigations against 7-Eleven stores and entered into an Enforceable Undertaking with a third.

In addition, Fair Work inspectors issued three Compliance Notices, 13 Infringement Notices (on-the-spot fines) and 16 Letters of Caution to 7-Eleven store operators.

A Statement of Findings on the 7-Eleven Inquiry will be issued early next year, including recommendations for the company's head office.

"The findings will be designed to ensure 7-Eleven takes steps to bring about sustainable change in culture in the 7-Eleven network in relation to compliance with workplace laws," Ms James said.

An announcement that former ACCC chairman Professor Allan Fels will head a 7-Eleven panel to review and resolve wage claims is encouraging, but the Fair Work Ombudsman is keen to learn more about how the process will work.

"Clearly, we welcome any development which puts money which should have been paid in the first place back into the hands of workers," she said.

"I am pleased that 7-Eleven head office now seems willing to take steps to address any systemic issues underpinning the wages and conditions breaches we have been finding at 7-Eleven stores for some time now."

Ms James says the Fair Work Ombudsman is committed to continuing its own, independent investigations to ensure 7-Eleven takes the necessary steps to ensure ongoing compliance with federal workplace laws.

"And it is important that there is transparency and accountability to the Fair Work Ombudsman and the community around the steps taken by 7-Eleven head office to bring about sustainable change in culture among its franchisees," she said.

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 by calling 13 14 50 and information and helpful materials on the website is translated into 27 different languages.

Background

In 2011, the former operators of two 7-Eleven stores in Melbourne and Geelong - Bosen Pty Ltd and its directors Hao Chen and Zue Jing - were fined a total of \$150,000 and ordered to back-pay six international students more than \$89,000 (see: [Convenience store operators fined \\$150,000 for underpaying international students \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/april-2011/20110427-bosen\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/april-2011/20110427-bosen)).

In August this year, the former operator of a 7-Eleven store in Brisbane, Mubin Ul Haider, was fined \$6970 after underpaying an international students more than \$21,000 and refusing to co-operate with the Fair Work Ombudsman (see: [7-Eleven operator fined over underpayment \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150804-haider-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150804-haider-penalty)).

In June this year, the Fair Work Ombudsman commenced proceedings against the operators of a 7-Eleven store at Blacktown, in Sydney – Harmandeep Singh Sarkaria and his company Amritsaria Four Pty Ltd – for allegedly underpaying two migrant employees almost \$50,000 and creating erroneous records for the workers. The matter is still before the Court (see: [7-Eleven operator faces Court over underpayments \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150831-amritsaria-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150831-amritsaria-litigation)).

The Fair Work Ombudsman also entered into an Enforceable Undertaking earlier this year with the operators of a 7-Eleven store in the Melbourne CBD – Kumar Sandarakumar and his company PSP International Trading Pty Ltd - after staff were underpaid more than \$30,000 and employment records were doctored (see: [7-Eleven franchisee admits doctoring records and underpaying workers to cut operating costs \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/sep-tember-2015/20150901-psp-7-eleven-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/sep-tember-2015/20150901-psp-7-eleven-eu-presser)).

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