

Pacific Islander visa-holders worked 36 consecutive days, short-changed \$14,700

25 August 2016

Workers recruited from Vanuatu by a labour-hire operator worked 36 days straight on a NSW North Coast blueberry farm and were underpaid more than \$14,700, a Fair Work Ombudsman investigation has found.

The 26 employees, many who spoke little English, were recruited by Melbourne-based Seasonal Labour Solutions Pty Ltd (SLS) last year.

The 416 visa-holders were sent to work on a blueberry farm at Crossmaglen, near Coffs Harbour, between September last year and January this year.

Apart from being short-changed the penalty rates they were entitled to on public holidays under their piece work agreements, the employees were denied appropriate rest breaks when they worked 36 consecutive days from September 29 to November 2, stopping work intermittently when rain interrupted harvesting.

Seasonal Labour Solutions Pty Ltd, which recruited the workers under the Seasonal Worker Programme, has signed a workplace pact aimed at encouraging behavioural change and future compliance with its federal workplace obligations

Fair Work inspectors discovered the underpayments and breaches of the National Employment Standards (NES) in relation to maximum weekly hours when they audited work practices on the farm in December last year as part of the Agency's national Harvest Trail Inquiry into the horticulture and viticulture sectors.

The Harvest Trail Inquiry began in mid-2013 in response to ongoing requests for assistance from employees in the horticulture sector and the Agency's observations that there is confusion among growers and labour-hire contractors about their workplace obligations.

The Fair Work Ombudsman is active in a range of industries known to employ significant numbers of overseas workers, including horticulture, hospitality, cleaning, convenience stores and trolley collecting.

On the Crossmaglen blueberry farm, Fair Work inspectors discovered that Seasonal Labour Solutions had not complied with a requirement under the Horticulture Award to pay employees double piece rate penalties on the public holidays that fell during their employment, including Christmas Day.

This led to the workers being underpaid a total of \$14,720. The largest underpayment of an individual worker was \$770.

Seasonal Labour Solutions has co-operated with the Fair Work Ombudsman's investigation and back-paid the workers in full.

The company has entered into an Enforceable Undertaking (EU) with the Fair Work Ombudsman and will engage an external professional to audit its compliance with workplace laws and report on the results.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings.

"We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate and fix the problem," says Fair Work Ombudsman Natalie James.

Seasonal Labour Solutions will also register with the Fair Work Ombudsman's My Account portal and demonstrate it has developed systems for staying up to date with minimum entitlements applicable under the Horticulture Award.

Ms James says it is important that the integrity of the Seasonal Worker Programme be upheld.

The Seasonal Worker Programme helps contribute to the economic development of participating countries, while also offering Australian employers in the horticulture industry the ability to employ workers from selected Pacific Island countries and Timor-Leste when they cannot find enough local labour to satisfy seasonal demand.

People from the Pacific region and Timor-Leste can work in Australia on a short-term basis under the programme, which is open to employers in agricultural industries.

It is also open to employers in certain locations across Australia in the tourism and accommodation industries.

However, Ms James says the Fair Work Ombudsman is aware that many fruit pickers are also young overseas workers, often on the 417 working holiday visa, who may be vulnerable if they are not fully aware of their rights.

The Harvest Trail Inquiry has involved Fair Work inspectors making field trips and conducting audits in fruit-growing regions around the country, meeting with growers, labour-hire contractors, hostel operators, seasonal workers, industry bodies, local councils, unions and other relevant stakeholders.

In May, the fair Work Ombudsman launched an “Anonymous Report” function to allow the community to alert the Agency to potential workplace issues.

Intelligence can be provided at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

“If someone suspects something isn't right, but is unable or unwilling to get directly involved in resolving the issue, they can tell us about it using this new form,” Ms James said.

Further, the Fair Work Ombudsman also has a list of “tips” for backpackers working in the horticulture sector:

- Don't enter into work arrangements with people who meet you at regional airports or bus depots. These people will approach you with promises of guaranteed work picking fruit or vegetables and accommodation and transport. If it sounds too good to be true, then it probably is!
- Don't respond to questionable advertisements where there is only a first name and a mobile phone number provided. Legitimate providers will advertise for workers appropriately.
- Know what you are worth. For work picking fruit or vegetables, or pruning, you should receive at least \$22.13 an hour on a casual hourly basis.
- If you are on a piece work agreement this should allow you to pick enough to make more than \$22.13 an hour if you are an average worker. If you are a very hard worker you can earn more than this.
- Know who you are working for – ask the question.
- Keep a diary of the hours you work, the places you work and the type of work you are doing.
- Take the time to find an ethical and legitimate provider that pays correctly and doesn't seek to rip you off! The Australian Government has established a Harvest Trail Guide. This guide seeks to link legitimate labour hire providers with growers and provides a range of other information across all regions of Australia. The guide is available on the [Job Search Harvest Trail Resources page](https://jobsearch.gov.au/job/search/harvest) [↗] (<https://jobsearch.gov.au/job/search/harvest>) or by calling the National Harvest Trail hotline on 1800 062 332.
- Enjoy your working holiday in Australia – remember that the growers rely on visitors such as yourself to harvest their crops – they should treat you well and make sure you are not exploited.

The Fair Work Ombudsman also offers an interpreter service for non-English speaking employees who may be concerned their workplace rights have been compromised, and they can call 13 14 50.

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

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

The Fair Work Ombudsman's Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements. Visit www.calculate.fairwork.gov.au (<http://www.calculate.fairwork.gov.au/>) to learn more.

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

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Download

- [Seasonal Labour Solutions Enforceable Undertaking \(DOCX 152KB\)](http://www.fairwork.gov.au/ArticleDocuments/971/seasonal-labour-solutions-eu-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/971/seasonal-labour-solutions-eu-redacted.docx.aspx) (PDF 331.5KB) (www.fairwork.gov.au/ArticleDocuments/971/seasonal-labour-solutions-eu-redacted.pdf.aspx)

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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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