

Salon operator penalised \$112,000 for “self-serving piece of subterfuge” in exploiting overseas workers

31 August 2016

The operators of an Adelaide hairdressing salon have been penalised a total of \$112,000 and ordered to back-pay two exploited Taiwanese hairdressers almost \$40,000 following legal action by the Fair Work Ombudsman.

The Federal Circuit Court has penalised Wei Wang \$12,000 and his family company Sonisolar Pty Ltd a further \$100,000 ... describing the exploitation as a “self-serving piece of subterfuge”.

Wang operates the F10 Quick Cut franchise outlet at the Elizabeth Shopping Centre and formerly operated the outlet at the Arndale Shopping Centre.

The two exploited Taiwanese hairdressers - a man and a woman in their 20s - were underpaid a total of \$39,144 when they worked at the salons between September, 2013 and May, 2014.

They were in Australia on 417 working holiday visas and spoke limited English.

In addition to the penalties, Judge Stewart Brown has ordered Wang and Sonisolar to back-pay the workers in full.

Further, Judge Brown has ordered Wang and Sonisolar to pay \$13,862 to the Fair Work Ombudsman towards the cost of flying the two underpaid workers from Taiwan to Adelaide to be witnesses for a contested hearing in May this year.

After the witnesses arrived in Adelaide, Wang did an about-face and admitted the contraventions on the morning of the scheduled hearing.

Judge Brown found there was "significant substance to the Fair Work Ombudsman's submission that Mr Wang's actions were tactically motivated and he had no intention of defending the proceedings on their merits".

The exploitation involved Wang recruiting the two workers from Taiwan and requiring them to work a 50-hour week over six days – but treating them as independent contractors, paying them amounts that resulted in an average rate of less than \$10.50 an hour.

They were entitled to be provided with minimum employee entitlements under Australia's Hair and Beauty Industry Award, including more than \$17 an hour for ordinary hours and up to \$38 an hour for weekend, overtime and public holiday work.

Wages in lieu of notice and annual leave entitlements were also underpaid.

After the workers made underpayment allegations, the Fair Work Ombudsman investigated and found they were employees, because Wang had a high level of direction and control over their duties and they were not operating their own businesses.

Legal action commenced after Wang refused to co-operate and rectify the matter.

In his judgment, Judge Brown dismissed Wang's claims that, as a Chinese immigrant, he did not understand his obligations under Australia's workplace laws and the contraventions were inadvertent.

Judge Brown described the misclassification of the workers as a "self-serving piece of subterfuge" that was "designed solely to ensure that Mr Wang paid the bare minimum to the two workers".

"He must have been aware that, to all intents and purposes, the two were Sonisolar's employees, working in the company's salons, as directed by the company's proprietor," Judge Brown said.

"I regard the conduct of the respondents as being extremely serious and requiring a heavy level of censure. Through a process of artifice, two vulnerable individuals, from overseas, were erroneously characterised as contractors, which led to them each being paid a fraction of their proper entitlements and being excluded from all the protections of the industrial safety net."

"It is important to deter other employers from not paying the minimum wage safety net or paying employees the required loadings arising from work performed on weekends or on public holidays to overseas employee visa holders."

Judge Brown also noted that the workers had been upset by a report on the television current affairs program Today Tonight which featured their full names and photos in airing claims by Wang that they had stolen money.

Judge Brown noted that the workers denied the claims and that South Australian Police had elected not to pursue the matter.

"The fact remains Mr Wang's complaints of theft have not been resolved in his favour and (the workers) have not been subject to direct scrutiny in respect of the issue," Judge Brown said.

"In my view, this remains a serious case of wage exploitation of temporary workers from overseas, who notwithstanding serious attacks on their honesty, were prepared to return to Australia to assist the authorities prosecute the persons who had exploited them."

In addition to the underpayment contraventions, Wang and Sonisolar breached record-keeping and pay-slip laws and failed to fully comply with two Notices to Produce employment records issued by Fair Work inspectors.

Judge Brown described the additional matters as serious contraventions that undermined the administration of workplace laws.

Fair Work Ombudsman Natalie James says employers should be aware that the Fair Work Ombudsman treats underpayment of overseas workers very seriously.

Overseas workers on the 417 working holiday visa have emerged as a strong priority for the Fair Work Ombudsman, and their wages and conditions are the subject of a national Inquiry launched last August.

Ms James says she is focused on ensuring the Agency does more to ensure culturally and linguistically diverse business operators understand and comply with Australian workplace laws.

"Minimum wage rates apply to everyone in Australia - including visa-holders - and they are not negotiable," she said.

"While I understand there are cultural challenges and vastly different laws in other parts of the world, it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages."

Employers who are concerned that they are not meeting their workplace obligations can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94.

An interpreter service is available by calling 13 14 50.

Small businesses calling the Infoline can opt to receive priority service to assist with their inquiries.

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.

Ms James said the Agency recently launched an Anonymous Report function which enables members of the community to alert the Fair Work Ombudsman to potential workplace issues.

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

"The Fair Work Ombudsman is determined to build a culture of compliance with workplace laws across Australian workplaces," Ms James said.

"While many employers want to do the right thing, there are some who seek to gain a competitive advantage by exploiting vulnerable workers, such as visa-holders," she said.

Ms James says her Agency is also committed to improving compliance in the hair and beauty industry.

"The Agency will continue to provide ongoing education and support to the hair and beauty sector to encourage and improve compliance levels.

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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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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