

Labour-hire operator allegedly underpaid overseas workers on Queensland farms

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A national Inquiry into exploitation of overseas workers on Australian farms has led to the Fair Work Ombudsman launching legal action against a Queensland labour-hire operator for allegedly underpaying overseas workers more than \$60,000.

Facing the Federal Circuit Court are Queensland man Ram Kumar and the labour-hire company he owns and operates, Seasonal Farm Services Pty Ltd.

The Fair Work Ombudsman alleges Mr Kumar and his company underpaid 144 employees a total of \$60,780 between June, 2014 and June, 2015.

The company supplied the employees to pick and pack fruit and vegetables on a number of farms in Queensland's Lockyer Valley.

One of the employees also performed supervisor duties.

Most of the employees were overseas workers from Asia, Europe and the UK who were in Australia on 417 working holiday visas at the time.

Three were aged as young as 19.

A number of the employees were working for Seasonal Farm Services to become eligible to stay in Australia for two years on their 417 visas by undertaking 88 days specified work in a designated regional area and in certain industries in their first year.

After receiving an underpayment allegation from an employee, the Fair Work Ombudsman investigated Seasonal Farm Services as part of its national Harvest Trail Inquiry aimed at improving compliance with workplace laws in the horticulture industry.

It is alleged that Fair Work inspectors found that the employees were generally paid flat rates ranging from \$16 to \$18.50 an hour.

However, as casual employees under the Horticulture Industry Award, the pickers and packers were allegedly entitled to be paid \$21.09 an hour, with the supervisor entitled to \$22.31.

It is alleged that the underpayments persisted for several months after the Fair Work Ombudsman put Mr Kumar and his company on notice of the need to pay minimum award rates.

The largest alleged individual underpayment is \$2820.

The Fair Work Ombudsman also alleges that Mr Kumar and his company contravened record-keeping laws, including by failing to keep any records for a further 70 employees who were paid piece rates.

The lack of records prevented the Fair Work Ombudsman from assessing whether the additional 70 employees had received their minimum lawful entitlements.

Fair Work Ombudsman Natalie James says a decision was made to commence litigation because of the seriousness of the alleged contraventions and the failure to rectify the matter.

"Visa-holders can be vulnerable if they are not fully aware of their rights or reluctant to seek help, so we place a high priority on taking action to ensure their rights are protected," Ms James said.

Mr Kumar faces maximum penalties of up to \$10,200 per contravention and Seasonal Farm Services Pty Ltd faces penalties of up to \$51,000 per contravention.

A hearing is listed for May 5, 2017 in the Federal Circuit Court in Brisbane.

Ms James says piece rates are a long standing feature of wage setting in the horticultural sector - but piece rates must be executed lawfully.

"This means they must agreed in writing between the employer and employee and they must be set at a level that allows an average competent picker to earn at least 15 per cent more than the relevant minimum hourly rate under the Horticulture Award," she said.

Ms James says addressing exploitation of visa holders has long been a priority for the Fair Work Ombudsman, with a number of the

Agency's Inquiries aimed at identifying and addressing the structural and behavioural drivers of non-compliance in various industry networks and supply chains in which overseas workers are heavily represented.

The Harvest Trail Inquiry is focusing on the horticulture and viticulture sectors nationally in response to ongoing requests for assistance from employees in the sector, persistent underpayments and confusion among growers and labour-hire contractors about their workplace obligations.

A key focus of the Harvest Trail Inquiry has been ensuring growers and their representatives apply due diligence to the labour-hire operators from which they are sourcing their workers.

The Harvest Trail Inquiry, which commenced in August 2013 and is due to report its findings next year, has been run alongside the Fair Work Ombudsman's recently completed Inquiry into the experiences of 417 working holiday visa-holders in Australia.

The 417 Visa-holder Inquiry found the requirement to do 88 days of specified, regional paid work to qualify for a second-year visa was unintentionally creating an environment where some unscrupulous operators are exploiting overseas workers, who are often reluctant to complain.

In the 417 Visa-holder Inquiry Report, available on the Inquiry Reports page (www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports), the Fair Work Ombudsman makes a series of recommendations focused on enhancing the regulatory framework and enhancing information, education, compliance and support.

Ms James says employers need to be aware that minimum lawful pay rates in Australia apply to everyone and are not negotiable.

"Employers cannot undercut minimum wages, even if employees offer to accept lower rates," she said.

"It is not acceptable for an employer to take advantage of any worker, especially those that are vulnerable, including overseas workers who speak limited English and have limited understanding of their workplace rights."

In the 2015-16 financial year, 38 of the Fair Work Ombudsman's 50 litigations (76 per cent) involved a visa holder. Sixteen of those litigations involved a 417 visa holder.

In 2015-16, the Fair Work Ombudsman recovered just over \$3 million for all visa-holders, with \$1.37 million of this for 417 visa-holders.

Ms James says business operators also need to be aware that blatant contraventions of record-keeping laws are being treated particularly seriously.

"While we appreciate bookkeeping for employers can seem complex, it is completely unacceptable for an employer to fail to keep any records of the hours their employees work and what they are paid," she said.

"We provide free advice and resources to assist employers to understand and comply with their record-keeping obligations.

"I welcome the Government's commitments to enhance workplace laws to better protect vulnerable workers, including increasing applicable penalties for serious record-keeping breaches."

Employers and employees 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.

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 top tips for backpackers, seasonal workers and growers, and more information about the Harvest Trail Inquiry, are available on the [Harvest trail campaign page \(www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign#top-tips-for-backpackers\)](http://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign#top-tips-for-backpackers).

Fair Work Ombudsman's Pay and Conditions Tool (PACT) can assist business owners to calculate pay rates applicable to their business and templates for pay slips and time-and-wages sheets are available for free download.

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