

Fair Work Ombudsman secures \$23,000 in penalties against mobile phone retailer

19 December 2016

The operators of a mobile phone retailer who failed to heed warnings to pay employees' minimum lawful rates have been penalised a total of \$23,000 for short-changing an overseas worker at Frankston, in Melbourne.

Melbourne man Kam Man Yau has been penalised \$3000 and his company Phone Collection Pty Ltd a further \$20,000 in the Federal Circuit Court, as a result of legal action by the Fair Work Ombudsman.

Phone Collection operates mobile phone kiosks selling phone accessories and providing minor phone repairs in shopping malls in Victoria.

The penalties were imposed after Yau admitted his company underpaid an employee, a Korean national, at the 'Express Repair' kiosk at the Bayside Shopping Centre in Frankston a total of \$4029 between April and September, 2014.

In addition to the penalties, Yau's company has also back-paid the worker in-full.

The underpayment occurred despite Fair Work Inspectors having previously put Yau on notice of the need to pay minimum lawful entitlements, including penalty rates, when investigating similar complaints from two other workers, also Korean nationals.

Fair Work Ombudsman Natalie James says it is unacceptable for employers to continue to underpay workers even after they have been warned about complying with their obligations.

"Employers need to be aware that we treat underpayment of overseas workers in Australia particularly seriously," Ms James said.

"Overseas workers are entitled to receive the same minimum rates and entitlements that apply to all workers in Australia – and the rates are not negotiable."

The employee, aged in his mid-20s, was in Australia on a 485 Temporary Graduate Visa.

He was recruited via a job advertisement on a Korean-language website that encouraged workers to apply to help improve their English language skills.

Yau claimed he had intended to pay the employee a base salary of \$15 an hour and an additional bonus of \$6.50 per hour, which he described as being "quite big", if necessary sales were achieved.

However, the employee was paid an average of just \$13.16 an hour.

Under the General Retail Industry Award, he was entitled to receive between \$17.98 and \$18.52 for ordinary hours, more than \$20 an hour for evening work and more than \$37 an hour for Sunday and public holiday work.

Superannuation and annual leave entitlements were also underpaid and record-keeping and pay slip laws were contravened.

Judge Alistair McNab found that the company had a heightened responsibility to comply with its obligations to vulnerable employees from non-English speaking backgrounds and noted the previous underpayment complaints.

"(The penalties) take into account the prior complaints made and the failure to implement a system in response to those complaints," Judge McNab said.

Ms James says the Fair Work Ombudsman is committed to helping employers understand and comply with workplace laws but is prepared to take action against employers who ignore warnings.

She says there is a need to raise awareness of minimum entitlements among both employers and overseas workers in light of her Agency's Inquiry into the experiences of 417 visa-holders finding that many working holiday makers are not aware of their workplace rights, with lack of awareness highest among Asian workers.

In the 2015-16 financial year, the Fair Work Ombudsman recovered just over \$3 million for all visa-holders and 38 of the 50 litigations filed (76 per cent) involved a visa-holder.

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 and information on the website is translated into 27 languages.

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) .

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

matthew.raggatt@fwo.gov.au (mailto:matthew.raggatt@fwo.gov.au)

Page reference No: 6854

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.