

Metal manufacturer signs workplace pact after underpaying migrant workers \$23,000

2 December 2016

More than a dozen migrant workers employed at a metal manufacturing business in North West Melbourne have been reimbursed \$23,200 following an investigation by the Fair Work Ombudsman.

Sixteen casual employees from non-English speaking backgrounds were underpaid their ordinary hourly rates of pay, casual loading, penalty and overtime rates over a 10 month period.

The underpayments were discovered during audits conducted by Fair Work Inspectors as part of a proactive compliance and education campaign.

The employer, Roo and Oz Sheetmetals Pty Ltd, and its managing director, Thuy Ngoc Thi Phan, have rectified the underpayments and entered into an Enforceable Undertaking with the Fair Work Ombudsman.

Fair Work Inspectors checked the records of the company's 89 employees who were employed during the audit period.

The audit revealed that the majority of workers were employed full-time and were paid above what they were entitled to under the Award.

However, Inspectors found that sixteen casual workers were paid rates equivalent to full-time rates and, as a result, were underpaid their casual loading.

The casual workers received hourly rates of between \$18 and \$19, including on weekends and public holidays.

Under the Manufacturing and Associated Industries Award 2010, casual workers of the relevant classification are entitled to receive up to \$21.61 per hour for ordinary hours.

Fair Work Inspectors also found that the casual employees were underpaid their weekend and public holiday penalty rates, afternoon shift rates and overtime rates. The highest recovery for an individual worker was \$8677.

Ms Phan, the company's director, is also from a non-English speaking background and established the metal manufacturing business in 2003 after migrating to Australia.

She told Fair Work Inspectors that she was unaware of her business's obligation under Australian workplace laws to pay casual workers higher rates of pay.

In addition to rectifying the underpayments, the Enforceable Undertaking also requires Roo and Oz Sheetmetals Pty Ltd and Ms Phan to:

- Register with the Fair Work Ombudsman's 'My Account' portal at www.fairwork.gov.au,
- Issue a written apology to each underpaid worker, and
- Engage an external professional to conduct future audits of the company's compliance with workplace laws.

Fair Work Ombudsman Natalie James says Fair Work Inspectors decided to enter into an Enforceable Undertaking with Roo and Oz Sheetmetals Pty Ltd and Ms Phan as an alternative to litigation because of Ms Phan's willingness to co-operate and immediately rectify the underpayments.

Ms James says that she is increasingly concerned about the number of matters where migrant workers are underpaid by culturally and linguistically diverse (CALD) business owners.

"While I understand there are cultural challenges and 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," Ms James says.

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.

"Enforceable Undertakings are used when the Agency has formed a view that a breach of the law has occurred, but where the

employer has acknowledged this, accepted responsibility and agreed to co-operate and fix the problem," Ms James says.

The Fair Work Ombudsman is striving to build a culture of compliance where businesses understand and comply with their lawful obligations.

Information about workplace rights and obligations to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available at www.fairwork.gov.au.

The Fair Work Ombudsman's Pay and Conditions Tool (PACT) can assist business owners to calculate pay rates applicable to their business.

Employers registered with the Fair Work Ombudsman's 'My Account' portal can view and save pay rates and awards applicable to their business, seek advice online, receive alerts about minimum wage increases, and view recommended information about workplace laws in their industry.

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 on 13 14 50 and small business operators can opt to receive priority service when they call Monday - Friday, between 8:30 am and 5:30 pm.

The Fair Work Infoline also has a dedicated Small Business Helpline that small business owners can access at request when contacting the Fair Work Infoline on 13 13 94.

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 the Roo and Oz Sheetmetal Enforceable Undertaking (DOCX 139.8KB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-roo-and-oz-sheetmetal-pty-ltd-redacted.docx.aspx) (PDF 637.2KB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-roo-and-oz-sheetmetal-redacted.pdf.aspx)

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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

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