

Nepalese student says she was underpaid \$23,000 because she is “not an Aussie”

25 January 2016

An international student who was underpaid thousands of dollars claims she was told she would be paid less because “you are not an Aussie”.

She also alleges that her employer threatened to cancel her visa if she complained about her low wages to the Fair Work Ombudsman.

The 27-year-old, from Nepal, was paid a flat rate as low as \$12 an hour to work at the Health Express take-away food outlet at DFO South Wharf in Melbourne.

In a record of interview with the Fair Work Ombudsman, the student alleged that Health Express owner Jeffrey Herscu made it clear she would be paid less because she was an overseas worker.

“When I came for the interview, he said that I will give you the job, but as you are not an Aussie, I will be paying you a lesser amount,” she told Fair Work inspectors who investigated her request for assistance.

“It was really embarrassing for me. I had Australian friends who were doing the same kind of work, but were getting paid over \$20 an hour.”

The Fair Work Ombudsman discovered the casual employee was short-changed more than \$23,500 between September, 2013 and March, 2015.

She was entitled to be paid up to \$23.15 an hour for normal work, up to \$27.78 on Saturdays, up to \$32.41 on Sundays and up to \$50.93 on public holidays.

After seeking help from the Fair Work Ombudsman, the student returned to Nepal for several weeks to care for her sick father, only to find she had been removed from the Health Express roster on her return.

The woman was one of two international students who complained to the Fair Work Ombudsman that Health Express was underpaying them.

A second male student, 31, from India, was paid a flat rate of between \$16.47 and \$18.52 an hour between June, 2010 and March, 2015, resulting in an underpayment of more than \$27,300.

Both students were entitled to a uniform allowance of \$1.25 a shift which they never received and the male employee did not get his correct annual leave entitlements at the end of his employment.

Mr Herscu, the sole director of Rapid City Pty Ltd, which runs Health Express, has co-operated with the Fair Work Ombudsman and agreed to apologise and back-pay the \$50,000 owed to his two former employees.

Fair Work Ombudsman Natalie James says Mr Herscu and his company have been asked to sign an Enforceable Undertaking (EU) aimed at encouraging behavioural change.

This includes placing a public notice in the Melbourne media apologising for the conduct and making a \$5000 donation to the Western Community Legal Centre to promote workplace rights to vulnerable employees.

Additionally, the EU requires Rapid City to:

- Engage an external accounting professional to audit its workplace practices for the next three years,
- Register with the Fair Work Ombudsman's online tool MyAccount and demonstrate the ability to determine employee entitlements using the Pay Calculator,
- Implement systems and processes to ensure future compliance with workplace laws, and
- Implement a training program for managers responsible for human resources, recruitment and payroll to educate them on the rights and responsibilities of employers.

Ms James says the Fair Work Ombudsman treats the exploitation of overseas workers very seriously.

She says the Fair Work Ombudsman is working hard to build a culture of compliance with workplace laws in Australia by providing practical advice that is easy to access, understand and apply.

“It is important that there is a fair, competitive environment for employers who are doing the right thing by creating a level playing field in relation to business costs,” Ms James said.

“Anyone operating a business needs to ensure they take the time to understand our workplace laws applicable to their workplace.

“Employers simply cannot undercut the minimum lawful entitlements of their employees based on what they think the job may be worth, what the employee is happy to accept, what other businesses are paying, or what the job may pay in their country of origin.”

Ms James encouraged employers who had any uncertainty about whether their workplace practices were appropriate to visit www.fairwork.gov.au or call the call the Fair Work Infoline on 13 13 94 for advice.

An interpreter service is available by calling 13 14 50, and information on the website is translated into 27 languages.

“We are committed to helping employers understand and comply with workplace laws, but operators need to make an effort to get the basics right in the first place,” Ms James said.

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:

- [Rapid City Pty Ltd Enforceable Undertaking \(DOCX 156.3KB\)](http://www.fairwork.gov.au/ArticleDocuments/884/enforceable-under-taking-rapid-city-pty-ltd-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/884/enforceable-under-taking-rapid-city-pty-ltd-redacted.docx.aspx) (PDF 4.3MB) (www.fairwork.gov.au/ArticleDocuments/884/enforceable-under-taking-rapid-city-pty-ltd-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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