

Court penalises 7-Eleven operators \$150,000 for underpayment of overseas workers

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More 7-Eleven franchisees have been penalised for underpaying overseas workers.

Husband-and-wife Haiyao Xu and Yiran Gu have been penalised \$20,000 each.

The Federal Circuit Court has also penalised their company Hiyi Pty Ltd a further \$110,000.

The couple previously ran a 7-Eleven store at Parkville, in suburban Melbourne.

They now operate another in the CBD.

The Fair Work Ombudsman took legal action against the franchisees in relation to underpayment of workers at the Parkville store.

Twelve employees at Parkville were underpaid a total of \$84,047 between September, 2013 and September, 2014.

These amounts have now been back-paid in full.

The Agency has entered into an Enforceable Undertaking (EU) with Xu and Gu and their company in relation to underpayments at their City store.

Following negotiations with the Fair Work Ombudsman, 11 employees who worked for Hiyi Pty Ltd at the City store are progressively being back-paid.

At Hiyi's city store, employees were short-changed a total of \$106,189 between June, 2013 and August, 2015.

Almost all are overseas workers, including international students.

Fair Work Ombudsman Natalie James says an EU was implemented for the contraventions at the City store given the company's willingness to back-pay employees and overhaul its workplace practices.

The enforcement outcomes follow a series of actions by the Fair Work Ombudsman aimed at addressing systemic non-compliance it has identified within the 7-Eleven network.

The Fair Work Ombudsman has commenced legal action against eight 7-Eleven franchisees since July, 2009. Three are still to be finalised.

Last month, record penalties of more than \$400,000 were awarded against the operators of a Brisbane 7-Eleven store: [Media release - Record penalty against 7-Eleven operator who systematically exploited staff \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160621-mai-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160621-mai-penalty) .

The Fair Work Ombudsman conducted a national Inquiry into 7-Eleven and its findings are available on the [Inquiry reports page \(www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports\)](http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports) .

Ms James says her office is currently in discussions with 7-Eleven about a robust and transparent arrangement that will satisfy the Agency that Head Office is taking the necessary steps to build a franchise operating model that ensures workers employed in its network are correctly paid into the future.

Xu, Gu and their company first came to the Fair Work Ombudsman's attention when the Parkville store was targeted for a surprise night visit by Fair Work inspectors late in 2014.

Inspectors discovered that employees were paid flat rates of between \$12 and \$17 an hour.

However, Gu and Xu made false entries into the 7-Eleven head office payroll system to make it appear the employees had been paid Award rates and that they had worked fewer hours than was actually the case.

The employees were entitled to receive more than \$22 for normal hours and up to \$46 an hour for some weekend, public holiday, night and overtime shifts.

Four of the employees were underpaid more than \$10,000, with one short-changed \$16,500.

Laws requiring employers to issue accurate pay-slips to employees were also flouted.

Judge Suzanne Jones found “deliberate” and “serious” underpayment of vulnerable employees and “contravention of fundamental minimum entitlements”.

“Absent the audit of 7-Eleven stores engaged in by the Fair Work Ombudsman, it is likely that the underpayments would have continued unabated,” she said.

Judge Jones said: “There can be no doubt that (Xu and Gu) understood their obligations, but set about a course of conduct to deliberately contravene the Award and to disguise those contraventions.

“This conduct calls for full condemnation and approbation in determining the appropriate penalty.”

Judge Jones accepted Xu and Gu had rectified underpayments promptly upon being notified, expressed remorse for their conduct and co-operated with inspectors in relation to the investigation of both stores.

She accepted Xu and Gu’s submission that their franchising agreement with 7-Eleven head-office in relation to the Parkville store had placed significant restrictions on their ability to generate income from operating the store.

However, Judge Jones found that did not excuse their conduct and noted that the couple did have access to money.

The couple declared a combined taxable income of \$145,000 for the 2013-14 financial year and, with their parents’ assistance, purchased a \$1.35 million home in 2014 and a \$959,000 investment property in 2015.

They also sold an additional property in 2016 for \$540,000.

Judge Jones accepted that the couple paid one employee who was a family friend above Award wages and Gu admitted in an interview with the Fair Work Ombudsman that they had underpaid employees so they could service their business loan.

“I am satisfied that general deterrence in the retail industry more broadly and, in particular, amongst 7 –Eleven franchise owners, is a significant factor to be taken into account in determining an appropriate penalty in these proceedings,” Judge Jones said.

“The failure to provide the employees with pay-slips which accurately recorded the hours worked, in contravention of the Act, is not a simple administrative issue. It has serious consequences for the employees, who were misinformed about their actual hours worked and thereby denied the capacity to monitor and pursue their legal entitlements under the Act and the Award,” Judge Jones said.

The Fair Work Ombudsman’s investigation of the Parkville store, which Xu and Gu sold last year, led to the discovery of the underpayments at their Melbourne CBD store.

As with the Parkville store, inspectors found employees had been paid flat rates that undercut lawful minimums and that Xu and Gu had made false entries into the 7-Eleven head office payroll system to try to cover it up.

The EU they have signed with the Fair Work Ombudsman aims to encourage behavioural change and future compliance with workplace laws.

Under the terms of the EU, Xu and Gu have agreed to commission a professional external audit of their Melbourne CBD store next year, promptly resolve future complaints from employees and display a notice at their store detailing employee entitlements.

They must also notify the Fair Work Ombudsman if they plan to sell their 7-Eleven store or if they engage workers through any other business.

Ms James says that deliberate underpayment of vulnerable overseas workers will not be tolerated in Australia.

“We are very serious about weeding out employers who think they can exploit overseas workers,” she said.

“Even in situations where the employees themselves are too afraid to engage with us, we are committed to using all powers available to us to ensure rogue employers are held to account.

“We have minimum pay rates in Australia, they apply to everyone, and they are not negotiable.”

Ms James agreed with the Court’s judgment that the penalty imposed will assist in ensuring other employers in the retail sector, particularly within the 7-Eleven network, comply with their obligations.

Businesses can contact the Fair Work Ombudsman for advice and assistance if they are unsure of their obligations.

Employees and employers can also use the Fair Work Ombudsman’s free online tools and resources to check entitlements specific to their workplace.

The Agency’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.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

An interpreter service is available by calling 13 14 50 and the website also has materials translated into 27 different languages.

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- [Hiyi Pty Ltd Enforceable Undertaking \(DOCX 141.2KB\)](http://www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-hiyi-pty-ltd-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-hiyi-pty-ltd-redacted.docx.aspx) (PDF 372.8KB) (www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-hiyi-pty-ltd-redacted.pdf.aspx)

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