

Court sends media company a “serious message” with \$272,000 penalty over unpaid internship

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The Federal Circuit Court has imposed a \$272,850 penalty against a media company to send it a “serious message” not to disguise employment relationships as unpaid internships.

Judge Tom Altobelli has handed down the penalty against Sydney-based AIMG BQ Pty Ltd following an investigation and legal action by the Fair Work Ombudsman.

The company is linked to the Ostar International Media Group and operates Chinese-language websites and publications for Australia’s Chinese community, including the Oriental BQ Weekly.

Judge Altobelli also penalised company director Zhao Qing Jiang \$8160 over his failure to comply with a Notice to Produce documents for Fair Work inspectors.

Further, Judge Altobelli imposed a three-year injunction restraining Jiang from contravening workplace laws.

AIMG BQ admitted in Court that it underpaid two event co-ordinators a total of \$18,767 between October, 2013 and June, 2014.

The company required one of the employees - an international student from China, aged 24 at the time and who spoke limited English - to do an extended period of unpaid work.

AIMG BQ required the student to do an ‘internship’ of 180 hours of productive work over a period of four months, with duties ranging from administration and office cleaning to event organising and magazine editing - before it started paying her wages.

It was unlawful for the internship to be unpaid because the student was performing productive work that was not a formal part of her studies, a Master of Event Management degree at the University of Technology in Sydney.

After the internship period, AIMG BQ paid the student an unlawfully low flat rate of \$50 a day, or just \$6.56 an hour. In total, the student was underpaid \$8387.

Judge Altobelli found that AIMG BQ had exploited the employee “in order to obtain a reduction in wage costs”.

He said there was a need to send a “serious message” to AIMG BQ and Jiang that “the Court will not countenance attempts to disguise employment relationships as unpaid internships and thus deny employees their required minimum entitlements”.

Judge Altobelli noted a need to deter other employers from similar conduct.

He referred to a report released by the Fair Work Ombudsman in 2013 into the issue of unpaid work which found that growing numbers of Australian employers are using unpaid work schemes as an alternative to hiring paid staff.

“Employers should be in no doubt that they have a positive obligation to ensure compliance with the obligations they owe to their employees under the law,” Judge Altobelli said.

He said he was in “complete agreement” with Court findings from the Fair Work Ombudsman’s successful legal action against Melbourne media company Crocmedia that “profiting from ‘volunteers’ is not acceptable conduct within the industrial relations scheme applicable in Australia”.

(Crocmedia was penalised \$24,000 in 2014 for implementing an unpaid work arrangement that led to two young employees being underpaid thousands of dollars - see: [Company fined \\$24,000 over unpaid work scheme \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/january-2015/20150129-crocmedia-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/january-2015/20150129-crocmedia-penalty))

The other employee underpaid by AIMG BQ was originally from China but is now a permanent resident of Australia. She was paid an unlawfully low flat rate of less than \$14 an hour, resulting in underpayments totaling \$10,380.

Under the Clerks – Private Sector Award 2010, the employees were entitled to be paid between \$17.41 and \$19.07 for normal hours and rates of up to \$38.30 for overtime, weekend and public holiday work.

Leave entitlements and pay-in-lieu of notice were also underpaid, and frequency-of-pay laws were contravened.

While AIMG BQ eventually back-paid the workers in full, Judge Altobelli said the contraventions “involved two employees being deprived of their most basic entitlements” and were “especially serious” given that the Fair Work Ombudsman had made AIMG BQ and Jiang well aware of the need to comply with workplace laws in the context of previous investigations dating back to 2013.

Jiang and a Melbourne media company he operates, 3CW Chinese Radio Pty Ltd, were previously found to have underpaid two Chinese nationals more than \$60,000 in wages and entitlements – and the matter was the subject of an Enforceable Undertaking in 2014 (see: [Radio presenters were employees – not volunteers – and must be back-paid \\$60,000 \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/september-2014/20140919-3cw-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/september-2014/20140919-3cw-eu-presser)).

Judge Altobelli found that Jiang and AIMG BQ had not demonstrated contrition for their conduct.

“In the absence of engagement with the Fair Work Ombudsman during the investigation, the absence of any evidence of genuine contrition or corrective action, the only inference the Court can draw is that rectification of the underpayment appears more a matter of expediency, a ‘cost of doing business’, than an acceptance of wrongdoing,” he said.

Judge Altobelli also found there was a need to maintain a level playing field for employers, to prevent non-compliant employers gaining an unfair competitive advantage in their industry.

The latest penalties also come after the Fair Work Ombudsman earlier this year secured a \$17,500 penalty against the former operator of a Melbourne marketing company over her involvement in the underpayment of three former interns (see: [Penalty for underpayment of interns \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/february-2016/20160216-aldred-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/february-2016/20160216-aldred-penalty)).

Fair Work Ombudsman Natalie James says the Court’s decision sends a clear warning to employers considering unpaid work schemes as a source of cheap or free labour.

“We are committed to protecting vulnerable young workers as they enter the workforce and we will take action employers against employers who seek to exploit young workers,” she said.

“The system allows for unpaid work in some circumstances, as part of a structured learning program, for example. But the law prohibits the exploitation of workers by characterising them as ‘interns’ or as doing ‘work experience’ when those individuals are fulfilling the role of an employee. Such workers must be paid minimum employee entitlements.

“We don’t want to stifle genuine learning opportunities that help young people get a foot in the door, but we also don’t want to see young people being treated unfairly through unlawful unpaid work schemes.

“We want to educate employers and workers about what genuine learning opportunities look like.”

The Fair Work Ombudsman has developed a range of resources – available at www.fairwork.gov.au/unpaidwork - for employers, employees and higher education institutions to promote a clear understanding in the community about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act.

They include fact sheets on topics including unpaid internships and work experience, unpaid trials, and vocational (student) placements. There is industry-specific information for the print and broadcast media, professional services, hair and beauty and hospitality sectors. The unpaid work research report commissioned by the Fair Work Ombudsman is also available.

In January, Ms James revealed that the Fair Work Ombudsman was enlisting the support of the Chinese business community to help educate Chinese employers and their employees about their workplace rights and obligations.

The Chinese-speaking community is one of the largest culturally and linguistically diverse communities in Australia, with more than 50,000-plus Chinese employers and more than 250,000 Chinese employees.

A series of roundtable discussions with key Chinese leaders last year endorsed a strategic approach to engaging with the community to build a culture of compliance with Australian workplace laws.

“Anyone establishing a business, including migrant employers, need to ensure they take the time to understand our workplace laws applicable to their business,” she says.

“Migrant 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.”

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 on 13 14 50. Information on the website to assist people from culturally and linguistically diverse backgrounds has been 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) .

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