

Darwin eateries “on notice” over underpayment of overseas workers

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Two popular Darwin eateries have been put on notice after they were found to be short-changing overseas workers thousands of dollars.

The businesses underpaid nine overseas workers, from countries including China, France, Taiwan and Italy, more than \$23,000.

The Fair Work Ombudsman says both employers have been formally cautioned that further breaches of workplace law will not be tolerated.

Some of the workers were in Australia on the 457 skilled worker visa and others on the “backpacker” 417 working holiday visa.

The Federal Circuit Court late last year issued a stern warning to rogue employers in Darwin that they risked tarnishing Australia’s reputation overseas.

The latest underpayment of overseas workers uncovered by the Fair Work Ombudsman in Darwin include a café which short-changed six visa-holders a total of \$19,000 for work they performed between February and August last year.

The casual employees worked as cooks, kitchen-hands and waiting staff.

They were paid a flat rate of \$20 an hour on weekdays and \$25 on weekends and public holidays, while one worker was not paid any wages for four of the six weeks’ work she performed.

Under the Restaurant Industry Award, the workers should have been paid a minimum of more than \$21 on weekdays, more than \$26 on weekends and \$43 on public holidays.

A second Darwin café has also been found to have underpaid four casual staff a total of \$6000, with \$4300 of the underpayment relating to three overseas workers.

The overseas workers included a French cook and a Taiwanese barista on 417 working holiday visas and a French waitress on a partner visa.

They were underpaid their minimum wages and entitlements between December, 2014 and January, 2015.

Fair Work inspectors discovered the underpayments at both cafes when they investigated requests for assistance from the workers.

Acting Fair Work Ombudsman Michael Campbell says the employers have narrowly avoided enforcement action by co-operating with inspectors and promptly rectifying the underpayments.

However, Mr Campbell says now that both businesses have been educated about their workplace obligations, future contraventions of workplace law will be treated very seriously.

Yesterday, the Fair Work Ombudsman revealed that more than \$32,000 in back-pay had recently been recovered for 41 employees across the Northern Territory who worked in take-away food outlets.

The money was part of a total of \$582,410 recouped for 929 workers nationally as part of a national campaign which targeted 565 take-away food shops throughout Australia.

Late last year, former owner-operators of the Java Spice Café Emporium in Darwin, husband-and-wife Peter and Moya Buckley, were penalised a total of \$73,000 for underpaying two Taiwanese backpackers.

Handing down the penalty, Judge Stewart Brown said: “In my view, backpackers and the like are particularly susceptible to being exploited by unscrupulous operators in the hospitality industry ...

“The Court has a responsibility to set penalties which will deter others from engaging in conduct which may tarnish Australia’s reputation as a satisfactory place for visitors and tourists to undertake a working holiday.

“Backpackers are often keen to augment their savings through casual employment. The turnover of workers in the hospitality industry, particularly in tourist areas such as Darwin, is likely to be high.

“Such potential workers are likely to be informally recruited and be unaware of their workplace rights because of their unfamiliarity with the Australian employment context.”

Judge Brown said: “Employers in the hospitality industry need to know that they cannot exploit backpackers or other itinerant employees and expect that their behaviour, if detected by authorities, will not attract a significant penalty.”

Another Darwin employer, Scott’s Painting Service operator Scott Aeron Davenport, was also penalised \$15,000 by the Federal Circuit Court last November for deliberately exploiting four young French 417 working holiday visa-holders and refusing to back-pay them thousands of dollars in unpaid wages.

The Fair Work Ombudsman’s 2014-15 annual report reveals that hospitality continues to generate high numbers of calls to the Fair Work Infoline and accommodation and food services accounts for the highest number of requests for assistance from employees.

As part of a three-year national hospitality campaign from 2012-2015, the Fair Work Ombudsman assessed 1066 restaurants, cafes and catering businesses nationally, finding an overall compliance rate of only 42 per cent.

A total of 456 employers had to back-pay 2752 employees more than \$1.2 million in underpaid wages and entitlements.

This follows a similar campaign in 2008 which saw more than \$1.6 million in underpaid wages and entitlements returned to 4679 hospitality industry workers across the country.

Mr Campbell says the Fair Work Ombudsman treats the underpayment of overseas workers, in particular, very seriously.

The Fair Work Ombudsman is currently conducting a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa.

The Director of the Fair Work Ombudsman’s Overseas Workers’ Team, Ms Carey Trundle, met with key stakeholders in Darwin and Alice Springs as part of the review to gain local intelligence.

Formal allegations of non-compliance from overseas workers have increased steadily in recent years to more than 2100 last financial year.

Of these, 930 related to subclass 417 working holiday visas, 315 to 457 temporary skilled work visa-holders and 181 to international students. Allegations received from overseas workers were highest in Queensland (28 per cent); NSW (25 per cent) and Victoria (22 per cent).

A total of \$1.6 million was recovered for visa-holders in 2014-15, up from \$1.1 million the previous financial year.

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

Overseas workers can call 13 14 50 if they need interpreter services.

The Fair Work Ombudsman has fact sheets tailored to overseas workers and international students on its website. Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages.

The Agency has also produced videos in 14 languages and posted them on YouTube to assist overseas workers understand their workplace rights in Australia.

Media inquiries:

Annie Lawson, Media Adviser

Mobile: 0466 522 004

annie.lawson@fwo.gov.au (<mailto:annie.lawson@fwo.gov.au>)

Lara O’Toole, Media Adviser

Mobile: 0439 835 855

lara.otoole@fwo.gov.au (<mailto:lara.otoole@fwo.gov.au>)

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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