

Chinese workers underpaid \$46,000 at Muffin Break outlet in Hobart

3 November 2016

Two Chinese workers were paid as little as \$11 an hour at a Muffin Break franchise outlet in Hobart, leading to more than \$46,000 in underpayments, an investigation by the Fair Work Ombudsman has found.

The case has prompted Fair Work Ombudsman Natalie James to reiterate her warnings that the notion that overseas workers of any particular nationality can be paid a 'going-rate' that is less than what the law requires is a myth that needs to be dispelled.

"Overseas workers are entitled to receive the same minimum rates and entitlements that apply to all workers in Australia – and the rates are not negotiable," Ms James said.

The two affected workers were underpaid a total of \$46,728 at the Muffin Break outlet on Murray Street, in the Hobart CBD, between April 2014 and December 2015, when it was operated as a partnership by husband-and-wife Zhuangzhi Zhang and Wanyu Huang.

Zhang and Huang sold the outlet earlier this year and the current operator of the store had no involvement in the underpayments.

One of the workers was on a student visa, while the other was on a temporary skilled graduate visa when she started at the outlet and is now a permanent resident.

The workers' duties at the Muffin Break outlet included cooking, food preparation, serving customers and cleaning and they were paid flat rates of between \$11 and \$13 an hour.

However, as casual employees, under the Fast Food Industry Award they were entitled to be paid more than \$23 for ordinary hours, weekend rates of up to \$33.24 and public holiday rates of up to \$52.23.

One of the workers was underpaid \$31,901 and the other was underpaid \$14,827.

Record-keeping and pay-slip laws were also contravened.

The Fair Work Ombudsman investigated after the workers, both females, made underpayment allegations and Zhang and Huang fully co-operated.

Zhang and Huang told Fair Work inspectors that after they arrived in Hobart from China as international students many years ago, they worked in casual fast food jobs and were paid flat rates well below lawful minimums.

The couple told the inspector they believed some people in the Chinese community in Australia thought this was acceptable conduct.

Zhang and Huang, who had no prior history of non-compliance, have entered into an Enforceable Undertaking (EU) with the Fair Work Ombudsman as an alternative to litigation.

Under the terms of the EU, they have apologised to the two workers and agreed to back-pay them in full by January 2017 via a back-payment plan.

If they establish a business employing workers in the next two years, they must alert the Fair Work Ombudsman and commission professional external audits of their business's compliance with workplace laws.

Ms James says the EU encourages behavioural change and future compliance.

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.

"We use Enforceable Undertakings where we have 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.

Ms James says she is increasingly concerned about the number of matters where visa-holders are underpaid by culturally and linguistically diverse 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," she said.

Ms James says there is a need to raise awareness of minimum entitlements among both employers and overseas workers in light of her Agency's Inquiry into the experiences of 417 visa-holders finding that many working holiday makers are not aware of their workplace rights and that lack of awareness is highest among Asian workers.

In the 2015-16 financial year, the Fair Work Ombudsman recovered just over \$3 million for all visa-holders and 38 of the 50 litigations (76 per cent) filed involved a visa-holder.

Ms James says the Fair Work Ombudsman is 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.

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

The Agency offers a range of free tools and resources for employers at www.fairwork.gov.au including template documentation to use when hiring, managing and dismissing staff, letters of engagement and probation, timesheet and pay-slip templates, leave application forms and a self-audit check list.

Employers and employees seeking assistance can visit the website or call the Fair Work Infoline on 13 13 94.

An interpreter service on 13 14 50 and the website contains materials translated into 27 different languages.

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