

## Penalty for employer who viewed Asian workers as “younger, cheaper and faster” than locals

21 October 2016

A labour-hire operator in Sydney who says she hired young Asian workers because they are “younger, cheaper and faster than locals who are old and slow” has been penalised more than \$100,000, as a result of legal action by the Fair Work Ombudsman.

Sydney woman Yan Hu has been penalised \$17,556 in the Federal Circuit Court and her company Global Express Consultancy Pty Ltd has been penalised a further \$87,783.

The penalties were imposed in the Federal Circuit Court after Hu admitted breaching workplace laws by underpaying 19 employees – all 417 working holiday visa-holders from Taiwan and Hong Kong - a total of more than \$45,000.

Fair Work Ombudsman Natalie James says the penalties should help to dispel the myth that overseas workers of any particular nationality can be paid a ‘going-rate’ that is less than what the law requires.

“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.

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.

The Global Express employees were underpaid between February, 2014 and May, 2015 when Hu’s company supplied them to work at three factories in Sydney:

- A Taren Point factory operated by Banquet Desserts Pty Ltd, which supplies cheesecakes and muffins to Coles and Woolworths,
- A factory at Mascot operated by Vienna Schubert Estia Pty Ltd, supplying patisserie products to organisations including hospitality businesses, airlines and schools, and
- A Kirrawee factory operated by South Pack Laboratories Pty Ltd, which operates a business packing vitamins and other non-prescription complementary medicines.

Hu paid employees flat rates of \$16 to \$18 an hour, resulting in underpayment of the minimum hourly rates, casual loadings, Saturday penalty rates and overtime rates the employees were entitled to under the applicable Awards.

Hu also unlawfully deducted bonds of up to \$400 from some of the employees’ wages, to be returned if they stayed with her company for at least six months and were not “lazy”. Pay slip laws were also contravened.

Fair Work inspectors investigated after employees contacted the Agency for assistance.

Judge Justin Smith found that Hu, who first came to Australia from China as an international student in 1999, was “very frank” in her discussions with them.

“I find that Global deliberately sought to engage foreign nationals as employees because of Ms Hu’s opinion, which she willingly shared... that they were ‘younger, cheaper and faster than locals who are old and slow’,” Judge Smith said.

Ms Hu also told an Inspector that she had paid “the market rate” and been “reasonable” but that the workers had complained because they were “greedy”.

The underpayments were rectified only after the Fair Work Ombudsman took legal action.

Judge Smith found that the underpayments were part of a “deliberate strategy aimed at maximising Global’s profits”. Judge Smith found that Ms Hu had shown a lack of contrition and there was a strong need for general deterrence.

“Those engaged in employing people in Australia must be aware that they face significant penalties for breaching their legal obligations in respect of their employees. Those penalties cannot be seen as no more than an acceptable cost of doing business,” he said.

“Further, it is important for employers to recognise that foreign nationals, just as much as Australian residents and citizens are

entitled to full pay for work done by them and that the vulnerability of those workers will be taken into account in the assessment of penalties.”

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

Ms James says the Fair Work Ombudsman’s report on its Inquiry into experiences of 417 visa-holders recommends exploring opportunities to work with a broader range of stakeholders to extend the channels through which information, support and education initiatives are delivered to overseas and migrant workers and employers workers in Australia.

Ms James says the penalty also serves as a reminder to companies that they face potential reputational and legal risks if they source labour through a contractor and do not take any steps to ensure the contractor pays the workers correctly.

“Outsourcing work to the lowest-cost contractor and turning a blind eye to whether the contractor pays workers’ correctly is not acceptable conduct,” Ms James said.

In the 2015-16 financial year, 13 per cent of dispute forms lodged with the Fair Work Ombudsman related to visa-holders and 44 per cent of visa-holders who came to us for assistance were 417 visa-holders.

The Fair Work Ombudsman recovered just over \$3 million for all visa-holders in 2015-16, with \$1.37 million of this for 417 visa-holders.

In 2015-16, 38 of the 50 litigations (76 per cent) filed by the Fair Work Ombudsman involved a visa-holder – and 16 of those litigations involved a 417 visa-holder.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) 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.

The Fair Work Ombudsman’s Anonymous Report function enables members of the community to alert the Fair Work Ombudsman to potential workplace issues. Intelligence can be provided at [www.fairwork.gov.au/tipoff](http://www.fairwork.gov.au/tipoff) (<http://www.fairwork.gov.au/tipoff>) .

Read the [media release \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/october-2016/20161015-417-inquiry-media-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/october-2016/20161015-417-inquiry-media-release) about the Fair Work Ombudsman’s report on its Inquiry into experiences of 417 visa-holders in Australia.

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](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au)  (<http://www.facebook.com/fairwork.gov.au>) .

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at [www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases) ([www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases)) .

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au) (<mailto:ryan.pedler@fwo.gov.au>)

**Page reference No: 6770**

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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

---

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.