

FWO reaches out to Korean community to help raise awareness of workplace rights, obligations

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Persistent underpayment matters involving Korean visa-holders have prompted the Fair Work Ombudsman to reach out to the Korean business community.

The Agency has written to key Korean community groups in an effort to enlist their support to raise awareness of Australian workplace laws.

This follows a similar approach last year to Chinese business and community leaders.

A number of migrant employers have told the Fair Work Ombudsman they undercut minimum wage rates because they pay a “going rate” for overseas workers.

However, Fair Work Ombudsman Natalie James says any so-called “going rate” for overseas workers of any nationality is a myth that must be dispelled.

Her comments follow another admission from a Korean national who started a business in Australia without first checking his workplace obligations and instead relied on the local Korean community to set his pay rate.

Sydney-based cleaning contractor Hyojae Lee paid three Korean backpackers flat rates as low as \$14.50 an hour, resulting in the 417 visa-holders being short-changed almost \$40,000 over just four months last year.

Ms James says it is not okay for employers to arbitrarily set and pay low, flat rates of pay ... minimum wage rates apply to everyone in Australia – including visa-holders – and they are not negotiable.

Last year, the operator of a Korean restaurant in Sydney told the Fair Work Ombudsman he advertised for staff for as little as \$12 an hour because he feared retribution from competitors if he offered minimum wages.

The restaurateur told of pressure from the Korean business community to recruit workers at below-Award wages and revealed that businesses which did not conform were fearful of payback.

Soon after, the Fair Work Ombudsman conducted an educational campaign on a number of Korean websites to raise awareness of workplace rights in Australia.

“While I understand there are cultural challenges and vastly different laws in other parts of the world, it is important for business people operating here 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 says.

According to 2011 Census data, there were almost 75,000 Korean-born people living in Australia, more than half of them in NSW, and less than 10 per cent spoke English at home.

At the end of June, 2015, there were also more than 50,000 Korean nationals in Australia, many of them international students, 417 working holiday back-packers and 457 visa-holders.

In the latest in a string of underpayment matters involving Korean visa-holders, the three backpackers who worked for Mr Lee’s Group K Pty Ltd cleaning business were short-changed a total of \$38,566 for work performed between June and October last year.

They variously worked 50 to 70 hours a week between 10.30 pm and 11 am Monday to Sunday at several locations in Sydney, including airline caterer Gate Gourmet and NRL club St George Illawarra Dragons.

The three, who have all since returned to Korea, had no experience in cleaning and no previous work experience in Australia.

Mr Lee, the company’s sole director, established Group K in April, 2014, but told Fair Work inspectors he did not seek professional advice about his lawful workplace obligations and turned to the Korean business community for “common” wage rates.

As a result, the Fair Work Ombudsman has taken enforcement action against Mr Lee in order to encourage behavioural change and future compliance with workplace laws.

Whilst Group K ceased operating in January, Ms James said Mr Lee had signed an Enforceable Undertaking (EU) with the Agency.

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,” says Fair Work Ombudsman Natalie James.

In 2015-16, a total of \$3.85 million in underpaid wages and entitlements was returned to 2132 employees as a result of their employers entering into Enforceable Undertakings with the Fair Work Ombudsman, up slightly on the \$3.75 million recovered for 2507 workers the previous year.

Fair Work inspectors investigated Mr Lee's workplace practices after receiving requests for assistance from the employees, all males in their 20s, in October last year.

Under the Cleaning Services Award, they were entitled to receive up to \$18.46 for ordinary hours, up to \$36.92 for weekend and overtime work and up to \$46.15 on public holidays.

As well as being short-changed their minimum wages, a transport allowance, annual leave entitlements and loadings for late night and early morning work were also underpaid.

Mr Lee also failed to comply with his record-keeping and pay-slip responsibilities.

One employee had \$300 unlawfully deducted from his wages to cover the cost of a fire brigade response to a false alarm at his workplace.

Mr Lee co-operated with the Fair Work Ombudsman's investigation and has commenced repaying his former workers in instalments under a back-payment plan agreed to by the Agency.

He will register with the Fair Work Ombudsman's My Account portal and undergo workplace relations training if he opens another business in the future.

In August, the Fair Work Ombudsman revealed that two Korean back-packers working for another Sydney cleaning contractor had also been short-changed about \$10,000 over three months working at a local college.

Media release: [Korean backpackers short-changed \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160803-korean-cleaners-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160803-korean-cleaners-mr) .

Ms James says the Fair Work Ombudsman is working hard to build a culture of compliance with workplace laws in Australia by providing practical advice that is easy to access, understand and apply.

She says it is important that there be a fair, competitive environment for employers who are doing the right thing by creating a level playing field in relation to business costs.

The Fair Work Ombudsman has been working with key cleaning industry participants as part of a Cleaning Accountability Framework to promote a culture of compliance with workplace laws.

Ms James acknowledged that competitive tendering and tight profit margins may have compromised the ability of some cleaning businesses to meet their compliance obligations.

However, she warned that employers could not look to cut costs by under-cutting and ignoring minimum wage rates.

According to the last Census, almost two-third of cleaners are female and almost 40 per cent of employees were born overseas. Many are international students.

Ms James says the cleaning workforce is therefore considered to be a vulnerable cohort and open to exploitation by unscrupulous operators.

In 2010-11, a national campaign found 37 per cent of 366 cleaning businesses audited had workplace breaches, and a total of \$242,451 in underpaid wages and entitlements was recouped for 621 employees.

A follow-up campaign in 2012-13 showed an overall contravention rate of 38 per cent of 578 businesses audited and another \$762,766 being recovered for 1212 underpaid employees.

In May this year, the Fair Work Ombudsman again called on cleaning contractors to pay greater attention to wage rates after a third national campaign found businesses were continuing to short-change their workers.

Media release: [Cleaning industry compliance needs to improve \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160513-cleaning-compliance-campaign-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160513-cleaning-compliance-campaign-presser) .

Fair Work inspectors recovered another \$17,000 for 59 cleaners following auditing of 54 employers nationally. The businesses were

assessed to monitor compliance with minimum wage rates, penalty rates, allowances, overtime, pay-slip and record-keeping obligations.

The audits revealed that 33 per cent of cleaning businesses were paying their workers incorrectly. Of concern was the finding that 18 businesses which had previously been found to be non-compliant were underpaying staff.

Ms James says all 18 were issued with formal Letters of Caution about their behaviour and two companies received on-the-spot fines.

The Fair Work Ombudsman has a number of Inquiries underway to identify and address the structural and behavioural drivers of non-compliance in various industry networks and supply chains in which overseas workers are heavily represented.

These include a review of the wages and conditions of workers in Australia on the 417 working holiday visa - which is nearing completion - and a Harvest Trail Inquiry into the horticulture and viticulture sectors nationally.

The Agency recently released information about the work it conducted in calendar year 2015 involving visa-holders.

Media release: [Fruit-picking backpackers most likely to dispute pay \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160510-visaholdersmr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160510-visaholdersmr) .

“Visa-holders can be vulnerable if they are not fully aware of their rights or are reluctant to seek help, so we place a high priority on taking action to ensure their rights are protected,” Ms James said.

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

An interpreter service is available by calling 13 14 50.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

The Fair Work Ombudsman’s Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements.

Ms James said the Agency recently launched an Anonymous Report function which enables members of the community to alert the Fair Work Ombudsman to potential workplace issues.

Intelligence can be provided confidentially at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

“While many employers want to do the right thing, there are some who seek to gain a competitive advantage by exploiting vulnerable workers, such as visa-holders,” she said

Below is a selection of some of the underpayment matters investigated by the Fair Work Ombudsman over the past 18 months involving Korean workers:

- [Court sends strong message to café operators who underpaid overseas workers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160804-sakuraya-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160804-sakuraya-penalty)
- [Yogurberry master franchisor faces Court over alleged underpayment of overseas workers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160713-yogurberry-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160713-yogurberry-litigation)
- [Café faces Court for allegedly requiring cook to pay back wages in exploitative cash-back scheme \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160722-ausinko-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160722-ausinko-litigation)
- [Restaurant failed to check wage rates and underpaid Korean, Japanese visa-holders \\$40,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160728-doublenine-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160728-doublenine-mr)
- [Woolworths’ supply chain in spotlight, with allegations of cleaners being short-changed \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160623-hwang-litigations\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160623-hwang-litigations)
- [Take-away food outlet allegedly used ‘internship’ program to exploit young Korean workers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160604-kjoo-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160604-kjoo-litigation)
- [Fast food operator allegedly underpaid Korean employees \\$108,000, fabricated records \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160620-little-vienna-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160620-little-vienna-litigation)
- [Cleaners at Myer stores allegedly underpaid \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160530-pioneer-personnel-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160530-pioneer-personnel-litigation)
- [Statement on outcome of Inquiry into the housekeeping services of 4 and 5-star hotels \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160520-hotel-housekeepers-inquiry\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160520-hotel-housekeepers-inquiry)
- [Backpackers working at abattoir short-changed more than \\$35,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160531-comprehensive-cleaning-eu-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160531-comprehensive-cleaning-eu-mr)
- [Cook short-changed more than \\$10,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-)

[media-releases/may-2016/20160524-naked-japan-presser](#))

- [Trolley collector allegedly underpaid \\$26,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160523-green-world-litigation\)](#)
- [Nando's restaurant withheld wages and short-changed Korean worker thousands of dollars \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/april-2015/20150417-nandos-eu-presser\)](#)
- [Perth cleaning contractor faces Court over alleged overseas worker underpayments \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/march-2016/20160303-goldfinger-perth-litigation\)](#)
- [Japanese restaurant short-changed Korean visa-holder \\$6000 in just five months \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/december-2015/20151207-kaby-holdings-eu-presser\)](#)
- [Dentist allegedly underpaid \\$66 000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/december-2015/20151201-nobrace-litigation\)](#)
- [Business unaware of minimum pay rates short-changed Korean backpackers \\$16k \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/december-2015/20151202-jhh-international-eu-presser\)](#)
- [\\$10 an hour doesn't cut it at beauty salon \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/november-2015/20151125-jisu-design-eu-presser\)](#)
- [Back-payment bill for Sydney café operators after Korean workers short-changed almost \\$40,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/october-2015/20151001-marsil-eu-presser\)](#)
- [Korean backpackers short-changed \\$28,000 – but sushi restaurant boss labels them “trouble-makers” \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/july-2015/20150723-knodaji-and-taejin-eu-presser\)](#)
- [Fear of retribution blamed for low wages \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/july-2015/20150708-kpg-eu-presser\)](#)
- [Nature's Care signs workplace pact after short-changing Asian backpackers almost \\$100,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/june-2015/20150611-natures-care-eu-media-release\)](#)
- [Travel agency signs workplace pact after short-changing Korean worker \\$4200 in just 7 weeks \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/march-2015/20150317-abella-travel-eu-presser\)](#)
- [Sushi bar reimburses Korean backpacker, revamps workplace practices after \\$5000 underpayment \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/february-2015/20150211-fine-food-gallery-eu-release\)](#)

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- [Group K Pty Ltd Enforceable Undertaking \(DOCX 153.3KB\) \(www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-group-k-redacted.docx.aspx\)](#) (PDF 522KB) ([www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-group-k-redacted.pdf.aspx](#))

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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