

# Agriculture Fair Work Case Study

**Most employers are not HR professionals, so this can lead to them creating HR risk without them even knowing it.**



## Case overview

The operators of a remote beef cattle farm in Queensland have been penalised a total of \$130,000 after failing to pay overtime entitlements to overseas backpackers who worked more than two months straight, without a day off.

The operator has been penalised \$20,000 and the company has been penalised a further \$110,000.

The penalties, imposed by the Federal Circuit Court, are the result of legal action by the Fair Work Ombudsman.

Fairwork found that the company underpaid six backpackers a total of \$38,254 between January, 2014 and September, 2015.

The backpackers, five men and one woman in their 20s from the UK and Ireland, were in Australia on the 417 working holiday visa when they were underpaid.

They went to work on the farm, after responding to advertisements on the Gumtree website, because they wanted to qualify for a second-year extension to their visas.

Fair Work Ombudsman inspectors investigated after the backpackers lodged requests for assistance.

Inspectors discovered the backpackers had worked up to 13 hours a day, six or seven days a week, but were mostly paid a flat rate of \$17 an hour for all hours worked, resulting in significant underpayment of their overtime entitlements.

Three of the backpackers did not have a single day off during their employment, respectively working 64, 80 and 88 consecutive days.

Under the Pastoral Award 2010, the backpackers should have been paid up to \$37.96 per hour for overtime work. Minimum hourly rates for ordinary hours, casual loading, public holiday pay and leave entitlements were also underpaid.

The company was also penalised for failing to make a copy of the Pastoral Award 2010 available to employees.

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Fair Work Ombudsman Natalie James says the

penalties imposed by the Court send a message that there are serious consequences for exploiting vulnerable overseas workers.

“Employers who think they can get away with just back-paying workers who complain and then refusing to change their habits should think again,” Ms James said.

“We take the mistreatment of overseas workers very seriously because we know they can be vulnerable if they are not fully aware of their workplace rights in Australia and are often reluctant to complain.

“Minimum wage rates apply to everyone in Australia – including visa-holders – and they are not negotiable.

“I am particularly disappointed that in this instance we have had to proceed to litigation given the employer was previously put on notice through their interactions with my agency,” Ms James said.

Addressing exploitation of workers on Australian farms has long been a priority for the Fair Work Ombudsman, with a number of Inquiries aimed at identifying and addressing the structural and behavioural drivers of non-compliance in the horticulture and viticulture networks and supply chains.

### Case facts

- Operator penalised \$20,000 and the company has been penalised a further \$110,000.
- The company underpaid 6 backpackers a total of \$38,254 between January, 2014 and September, 2015.
- The backpackers had worked up to 13 hours a day, six or seven days a week, but were mostly paid a flat rate of \$17 an hour for all hours worked, resulting in significant underpayment of their overtime entitlements.
- Three of the backpackers

did not have a single day off during their employment, respectively working 64, 80 and 88 consecutive days.

- Under the Pastoral Award 2010, the backpackers should have been paid up to \$37.96 per hour for overtime work.
- The six backpackers were underpaid between 28 and 51 per cent of their total minimum entitlements and the largest individual underpayment was \$11,592.

### What they should have done

The company should have better understood employees rights under the relevant award and minimum entitlements included within the award and NES.

### How Happy HR would have helped this business avoid the fair work claim

The Happy HR team would be able to outline basic employee entitlements. With our Premium Services, employers have a qualified HR consultant capable of completing Award Interpretations for each employee.

### Happy HR ROI (based off a 50-person company)

Fair Work penalty = \$130,000 = An equivalent of 43 years subscription with Happy HR! Plus countless hours saved on administration and in Fair Work!

