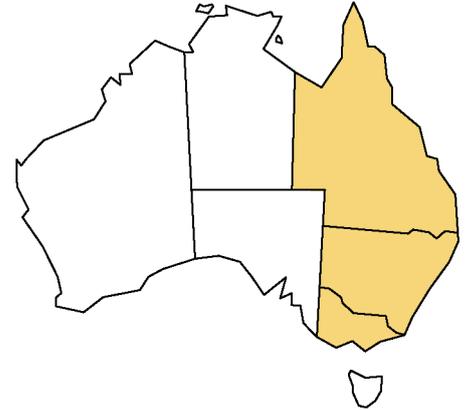
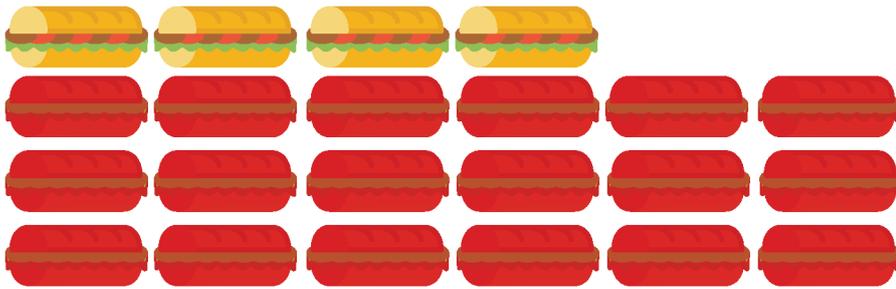


Subway compliance activity

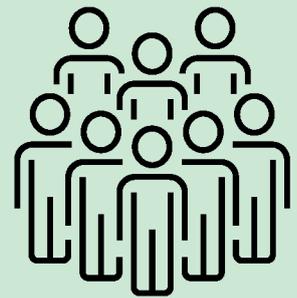
22 Subway franchisees in NSW, QLD and VIC



● 18 non-compliant

\$81,638.82

in unpaid wages repaid to
167 employees



Compliance and enforcement outcomes

9



Infringement
notices

(\$5,880 in penalties)

9



Formal
cautions

7



Compliance
notices



Australian Government

Fair Work
OMBUDSMAN

Subway compliance activity report

What we did and why

Subway started operating in Australia in 1988. There are now more than 1,300 outlets across all states and territories, ranging from small kiosks to larger outlets. All Subway outlets are owned by franchisees. Subway Systems Australia Pty Ltd (ACN: 009277034) is the franchisor.

The Fair Work Ombudsman (FWO) investigated the Subway franchise network in September 2017. This report details the findings of that activity, which was in response to a large number of enquiries, anonymous reports and requests for assistance in relation to a number of Subway franchisees.

Common allegations included:

- underpayment of the base hourly rate of pay under the Award
- non-payment of weekend penalty rates
- non-payment of wages for time worked
- non-payment for and lack of accrual of annual leave.

On 11-12 September 2017, we made unannounced visits to 22 Subway franchisees in New South Wales, Queensland and Victoria. Some franchisees were selected based on anonymous tip-offs and requests for assistance from employees, and some were chosen randomly. A total of 348 employees were identified as part of the activity, with the number of employees at each franchise ranging from 4 to 41.

Fair Work Inspectors spoke to employees, managers and owners and checked employment records available onsite.

We requested a sample of records for audit via a Notice to Produce Records or Documents (under section 712 of the Fair Work Act (the Act)). The initial audit period was July to September 2017. The audit period was extended by 3 months in some instances. Compliance audits focused on the following sections of the act:

- Section 44 – Contravening a term of the NES

- Section 45 – Contravening the *Fast Food Industry Award 2010* (the Award) / applicable enterprise agreement
- Section 535 – Employer obligations in relation to employee records
- Section 536 – Employer obligations in relation to pay slips.

Our findings

The majority of franchisees (18) were found to be non-compliant with Australian workplace laws.

Monetary breaches by 16 franchisees resulted in underpayments totalling \$81,638.82 for 167 employees, and included:

- non-payment of the correct minimum wages
- non-payment of the correct casual loading
- non-payment of the correct evening, weekend and public holiday penalties
- non-payment of overtime penalties
- non-payment of the applicable uniform allowance
- payment of loaded wage rates in lieu of paid leave entitlements.

The largest recovery from a single franchisee was \$31,383.45 involving 29 employees.

Non-monetary breaches included:

- pay slips not in the prescribed form and/or not containing prescribed information
- failure to give pay slips within one working day of payment
- failure to make and keep prescribed records.

A large proportion of employees (at least 45% based on records available) were young workers or from culturally and linguistically diverse (CALD) backgrounds. The CALD employees were reluctant to assist Fair Work Inspectors.

Two Subway franchisees entered into liquidation during the compliance activity period.

Outcomes

Fair Work Inspectors educated Subway franchisees about correct rates of pay and pay slip and record-keeping obligations.

We took enforcement action by issuing:

- 9 formal cautions
- 9 infringement notices (\$5,880 in penalties for a range of record-keeping and pay slip breaches)
- 7 compliance notices.

167 employees were reimbursed \$81,638.82 in unpaid wages.

Case study: Compliance notice

A Sydney franchisee employed 11 Sandwich Artists.

Fair Work Inspectors reviewed wages paid using information gathered on site, discussions with employees and the employer and records produced by the employer.

They found there had been \$5,069.57 in underpayments due to a failure to pay the correct minimum award wages; casual loading; evening, weekend and public holiday penalty rates; and, overtime rates.

The employer cooperated, back paying the 11 employees as compelled by the compliance notice.

Franchisor liability

We found significant non-compliance by many of the franchisees investigated in this activity.

These results, coupled with ongoing intelligence and investigations involving Subway franchisees, suggests there are systemic issues in the Subway franchise network.

Legislative changes in 2017 mean franchisors and holding companies can be held responsible for non-compliance by franchisees or subsidiaries, if they knew or should have known and could have prevented it. Our powers to investigate and enforce compliance were also strengthened to protect vulnerable workers.¹

¹ *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*: <https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform>