



# Fair Work OMBUDSMAN

## QLD – Food Court Audit Program 2010 Final Report

### Summary

During October and November 2010 the Fair Work Ombudsman (FWO) conducted the Queensland Food Court Audit Program (The Program). Fair Work Inspectors (FWIs) visited 138 businesses in Brisbane and regional food courts where they assessed compliance with time and wage record keeping obligations and hourly rates of pay.

The campaign was implemented to assess and improve compliance within the industry sector and create awareness of the FWO's role and functions. In considering the value of such a campaign it was recognised that food court employers typically employ a high number of vulnerable employees and experience a high turnover of staff.

Of the 138 business visited, 129 employers had their records assessed for compliance. Of the 128 audits finalised 94 (73%) employers were found to be compliant whilst 34 (27%) employers were identified as having contraventions. The campaign revealed that 177 employees were underpaid a total of \$45,257. One employer continues to be under investigation.

Further findings of the campaign are detailed below.

### Background

This campaign was implemented for a number of reasons including the fact that food courts had not previously been the focus of any FWO auditing activities in QLD.

Further, not only do food court employers typically employ vulnerable staff ( i.e. young people, people from non-English speaking backgrounds and casual employees) but FWO intelligence reveals that 19 complaints were received by FWO in relation to Brisbane food court employers in recent times.

With the introduction of the new legislation, namely the *Fair Work Act 2009* and Modern Awards as well as the reasons outlined above, a campaign specifically focussing on food court employers was undertaken.

## Campaign aim & objectives

The aim of the program was to ensure compliance with the Commonwealth workplace laws. The specific campaign objectives were to;

- educate employers on the correct application of the *Fast Food Industry Award 2010* and associated phasing provisions
- create increased awareness of, and compliance with, correct record keeping provisions by employers
- ensure employees in the target sector are receiving their minimum entitlements and obligations under Commonwealth workplace laws
- create a level playing field for employers in the food court sector
- educate businesses about resources available to them to assist in transitional issues

The program targeted food courts in Brisbane CBD, Cairns, Toowoomba and Rockhampton.

## Methodology

Having completed initial research into the food court industry sector, we identified 9 Brisbane food courts and 12 regional shopping centre food courts for audit.

We did not provide employers advance notification of the audit which occurred during October 2010. Rather, teams of FWIs attended food courts and were given discretion as to which businesses they selected for audit.

Franchise businesses and coffee shops, cafes, bars and restaurants providing primarily a sit down service inside a food court were not audited as part of this campaign.

We had anticipated conducting the audits during our first visit to the employers, however this was not possible in many instances as employers kept employment records away from the business premise. Where this was the case we advised the employer that we would return in 2 to 3 days to conduct the audit.

If the employer did not make the records available during our second visit or was uncooperative, we issued a statutory notice advising of the requirement to produce records and we completed a desk based audit upon receipt of the records.

If a field audit didn't identify any contraventions the employer received written notification of the outcome of the audit and the audit was finalised.

If the audit identified minor record keeping contraventions we asked the employer to sign a compliance commitment form, committing them to rectifying the contravention. Where more serious record keeping contraventions or monetary contraventions were identified the matter was further investigated and a contravention notice issued.

## Results

### Statistical findings

At 27 April, when the results of this campaign were compiled, we had achieved the following:

- Number of employers targeted for audit - 138
- Number unsuitable for audit - 9
- Number of audits completed - 128
  - Employers compliant - 94
  - Employers in contravention - 34
- Amount recovered - \$45,257
- Number of employees paid - 177
- Details of contraventions -
  - Monetary (underpayment of hourly rate) - 26
  - Non-monetary (record-keeping) – 6
  - Both monetary and non- monetary contraventions -2
- Number of ongoing investigations - 1

<b>Status of Audits – QLD – Food Court Audit Program 2010</b>	
Number of employers targeted	138
• <i>Employers compliant</i>	94 (73%)
• <i>Unsuitable for audit</i>	9
• <i>Employers in contravention (voluntary compliance)</i>	34 (27%)
• <i>Employers with monetary contraventions</i>	26
• <i>Employers with record keeping contraventions</i>	6
• <i>Employers with both monetary and record keeping contraventions</i>	2
• <i>Ongoing investigations</i>	1
Total amount recovered	\$45,257
Number of employees paid	177

Whilst the majority of the employers audited were found to be compliant, the majority of non compliant employers had monetary contraventions. From speaking to employers with monetary contraventions it became apparent that some were using former state award pay rates. Such employers were unaware of the referral of Queensland's industrial relations powers to the Commonwealth and consequently of the changes to the rates of pay. A total of \$45,257 was recovered for 177 underpaid employees.

The employers identified as having record keeping contraventions each signed a compliance commitment form and undertook to rectify the contravention.

## **Other Findings**

For the most part, FWIs were well received at businesses and employers were co-operative during the audit process. The vast majority of audits were completed on follow up visits to the businesses.

## **Conclusion**

The campaign findings highlight there is a possibility that a number of employers remain unaware of the referral of powers and the subsequent changes surrounding workplace relation laws.

Given the above possibility and the results of this campaign, a similar campaign in suburban Queensland food courts is being considered.

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