

Canberra café operator faces Court over serious record-keeping failures

24 April 2017

NOTE: Yang Brothers Investment Pty Ltd had back-paid three employees at the time this media release was issued and the company has now back-paid all employees in full.

The operator of a Canberra café and its directors are facing court for alleged serious contraventions of record-keeping and payslip laws.

The Fair Work Ombudsman has commenced legal action against Yang Brothers Investment Pty Ltd (YBI) and its twin brother directors, Mr Yong 'Johnny' Yang and Mr Zhi 'Jackie' Yang, who operate Café Garema in central Canberra.

The Fair Work Ombudsman alleges that YBI failed to make or keep appropriate records as required under Australia's workplace laws by failing to record employees' names, commencement dates, hours worked, rates of pay, payments made, leave accrued or taken, superannuation payments, or issue payslips.

Fair Work Ombudsman Natalie James says serious record keeping failures are of grave concern for the Agency.

"When we come across alleged record-keeping that is so sub-standard it prevents our inspectors from determining whether employees are receiving their minimum entitlements, we take these matters very seriously," Ms James says.

"This serious failure to keep adequate and lawful employment records obstructed my inspectors and prevented them from determining just how much the workers had been underpaid."

Despite the poor record keeping practices, the Fair Work Ombudsman also alleges that YBI underpaid 12 employees their minimum entitlements under the relevant Award.

Ms James says, based on records kept by YBI covering a two week period, inspectors were able to identify that the café's employees received flat rates of between \$14 and \$20 per hour.

The records showed that YBI allegedly underpaid twelve employees a total of \$1353 over the two week period. No other records were kept.

The alleged contraventions came to the attention of the Fair Work Ombudsman during a regional compliance audit.

It was not the first time the Agency had contacted the business. In 2012, Johnny Yang, then the manager of Café Garema, which operated as a sole trader under his brother Jackie Yang's name, was provided with significant educational material by Fair Work Inspectors after one of his employees lodged a complaint with the Agency.

Following the recent audit, the Fair Work Ombudsman made the decision to commence legal action to reinforce the legal requirement for businesses to make and keep employment records and because of the business's history of non-compliance.

Ms James says another concerning fact in this case is that many of the employees were young workers, the youngest being just 17 years of age at the time of employment.

"We are particularly focused on assisting young workers because they can be vulnerable if they are not fully aware of their rights or reluctant to complain," Ms James says.

Under the Restaurant Industry Award 2010 at the time of employment, Level Two casual employees who were aged 17 to 19 were entitled to receive between \$13.85 and \$19.63 for ordinary hours, including casual loading, and up to \$23.55 on weekends, depending on their age. Employees aged 20 and over were entitled to receive even higher rates.

YBI has advised the Fair Work Ombudsman that it has back-paid one of the 12 employees.

"We see far too many examples of sub-standard record-keeping that makes it impossible to ensure workers receive what they are owed," Ms James says.

“We welcome the Government’s commitments to enhance workplace laws to better protect vulnerable workers, including increasing applicable penalties for serious record-keeping contraventions,” Ms James says.

YBI faces a maximum penalty of up to \$27,000 per record keeping and pay slip contravention and Johnny and Jackie Yang face maximum penalties of up to \$5400 each per record keeping and payslip contravention.

In relation to the underpayment contraventions, YBI faces a maximum penalty of up to \$54,000 and Johnny and Jackie Yang face maximum penalties of up to \$10,800 each per contravention.

In addition to penalties, the Fair Work Ombudsman is also seeking orders that the company and the Yang brothers jointly and severally pay the amount as remains outstanding of the total underpayment amount of \$1353 plus interest to the Fair Work Ombudsman on behalf of the 12 underpaid employees.

The Agency is also seeking Court orders that YBI engage a third party to undertake an audit of compliance; that all directors and managers at the YBI undertake workplace relations law training; and that Johnny and Jackie Yang be restrained from contravening workplace laws in future.

It is the second litigation filed in 2017 involving record-keeping contraventions in Canberra.

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

An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

Employers and employees can also refer to the Fair Work Ombudsman’s Pay and Conditions Tool (PACT) to determine pay rates and check entitlements.

The Agency recently released a new smartphone app, Record My Hours, which is aimed at helping young people keep an accurate work diary. The app allows workers to export their data to their employer to help avoid misunderstanding and to complement employment records.

Both PACT and the Record My Hours smartphone app are available for free download from www.fairwork.gov.au. The Record My Hours app is available for Apple and Android devices.

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

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

Media inquiries:

Eithne Johnston, Media Adviser

Mobile: 0439 835 855

eithne.johnston@fwo.gov.au (<mailto:eithne.johnston@fwo.gov.au>)

Page reference No: 7140

Contact us

Fair Work Online: 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.