

## Legal action after 71yo worker allegedly underpaid at Queensland fast food outlet

15 December 2017

The Fair Work Ombudsman has commenced legal action against the former operator of a fast food outlet in northern Queensland for the alleged underpayment of a 71-year-old employee.

The case sets a record for having the oldest allegedly underpaid worker involved in any Fair Work Ombudsman legal action.

Facing Court are Luke McGrath and his company Wok Me Corporate NQ Pty Ltd, through which he formerly owned and operated a number of 'Wok Me' outlets in Queensland and the ACT, selling noodle, rice and sushi dishes.

The Fair Work Ombudsman alleges Mr McGrath and his company underpaid a cook employed at the Wok Me outlet in Rockhampton a total of \$12,658 over a period of just four months last year.

The employee was 71 years old and although he has been living in Australia for many years and is an Australian citizen, he is from a non-English-speaking background and has limited English skills, having been born and raised in China.

It is alleged the significant underpayment over such a short period is a result of the worker not being paid any wages for nine of the weeks he worked.

It is alleged that for the weeks he was paid wages, the rates he was paid sometimes undercut the minimum hourly rate for ordinary hours stipulated in the Individual Flexibility Agreement that applied to his position.

Overtime, annual leave and superannuation entitlements were allegedly also underpaid and record-keeping and pay slip laws were allegedly contravened.

The Fair Work Ombudsman investigated the matter after the employee contacted the agency for assistance.

Fair Work Ombudsman Natalie James says legal action has been commenced because a vulnerable employee had allegedly been blatantly underpaid.

"We are conscious that mature age employees are vulnerable in the workplace because they face fewer opportunities and can be reluctant to complain, so we treat cases involving mature age workers seriously," Ms James said.

"It is important that mature age workers who are keen to participate in the workforce are able to do so without being underpaid or treated unfairly."

Ms James says it is also disappointing that the alleged underpayment occurred despite the Fair Work Ombudsman having previously put Mr McGrath on notice to comply with workplace laws.

Mr McGrath faces maximum penalties of up to \$10,800 per contravention and Wok Me Corporate NQ Pty Ltd faces penalties of up to \$54,000 per contravention.

The majority of the alleged underpayment remains outstanding and the Fair Work Ombudsman is seeking a Court Order for Mr McGrath and the company to back-pay the worker in full.

The Fair Work Ombudsman is also seeking an Order requiring Mr McGrath to commission external audits of Individual Flexibility Agreements used at other businesses he is involved in operating.

A directions hearing is listed in the Federal Circuit Court in Brisbane for February 5, 2018.

Employers and employees, including visa-holders and those from culturally and linguistically diverse backgrounds, seeking assistance can visit [www.fairwork.gov.au](http://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 30 different languages.

In recognition that some members of the community may be reluctant to complain, the Fair Work Ombudsman also has a tool for reporting workplace issues anonymously and in different languages. The Anonymous Report tool can be accessed at [www.fairwork.gov.au/tipoff](http://www.fairwork.gov.au/tipoff) (<http://www.fairwork.gov.au/tipoff>) .

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## Contact us

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Fair Work Infoline: 13 13 94

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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

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