

## Little cheer at Japanese restaurant paying visa holders less than \$10 an hour

1 February 2017

A Gold Coast Japanese restaurant has been found to have underpaid more than \$24,000 to 10 workers after paying flat rates and deducting from wages of some workers who were visa holders.

The Fair Work Ombudsman found Bistro Cheers Japanese Family Restaurant, at Nobby's Beach, Queensland, had employed kitchen hands and food and beverage attendants on a casual basis and paid flat rates of between \$13 and \$18 an hour between May 2015 and January 2016.

The business was also found to have deducted a \$3 an hour "deposit" from the wages of some workers on the basis that they would be refunded the deposit, plus interest, provided they completed three months of employment and complied with the terms of their employment contracts. Superannuation entitlements were also deducted from employee wages.

These workers - who were all either on working holiday or student visas and all from non-English speaking backgrounds - received less than \$10 per hour worked for periods of their employment.

Fair Work Ombudsman Natalie James said the practice of deducting from the wages of workers was of particular concern.

"There are minimum pay rates which apply to all workers in Australia, including visa-holders," Ms James said.

"These rates are not negotiable. To not pay these rates is one thing, but even more concerning in this case is that the employer had entered into a practice where they thought it appropriate to deduct money from the wages of some workers in a bid to tie them to their employment. This is not appropriate and totally unacceptable."

The total underpayment to 10 employees during the nine month audit period was \$24,696.33.

The highest underpayment to an individual employee was \$5,466.87.

The company was also found to have failed to enter into a written part time work agreement with a part-time employee, and had failed to meet certain record keeping and payslip requirements which meant it difficult for Fair Work Inspectors to calculate the full underpayment for three workers.

Company director Kenosuke Saito, has rectified the underpayments and has now signed into an Enforceable Undertaking with the Fair Work Ombudsman.

"We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate and fix the problem," Ms James said.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings or, like in this case, an EU can be more effective.

Under the terms of EU, Mr Saito and Bistro Cheers Japanese Family Restaurant were required to engage an independent specialist to audit compliance with federal workplace laws, upgrade systems and processes to ensure future compliance, keep employment records and issue pay slips accordingly and register with the Fair Work Ombudsman's My Account portal.

Ms James says employers need to ensure they are aware of the minimum lawful pay rates their employees are entitled to, including penalty rates.

"It's not acceptable for an employer to pay a worker a 'going rate' or what they think the job is worth," she says.

"I am increasingly concerned about the number of matters where visa-holders and vulnerable workers are being underpaid by culturally and linguistically diverse business owners.

"I understand there are cultural challenges and vastly different laws in other parts of the world, but it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages."

Employers who are concerned that they are not meeting their workplace obligations can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or phone the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

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