

## **\$143,000 in penalties for \$18,000 underpayment of two overseas workers in Brisbane**

23 January 2017

A Court's decision to impose \$143,000 in penalties over two Taiwanese workers in Brisbane being underpaid \$18,000 sends a message about the seriousness of ignoring warnings to pay workers correctly, according to the Fair Work Ombudsman.

The penalties have been imposed over deliberate underpayments at two 'Hanaichi Japanese Fine Food' outlets at the Chermside shopping centre.

WY Pty Ltd, which operated the two Chermside outlets at the time of the underpayments and currently operates a Hanaichi outlet at Indooroopilly, has been penalised \$116,250 in the Federal Circuit Court.

In addition, the company's director and part-owner Chong Yew Chua has been penalised \$20,000 and the company's former internal payroll and account manager, Ning Yuan Fu, has been penalised \$7000.

The penalties are the result of legal action by the Fair Work Ombudsman.

Two workers - a man and woman from Taiwan aged in their 20s who speak limited English - were underpaid a total of \$18,491 while employed as kitchen hands at the Chermside outlets between February and August, 2015.

They were in Australia on 417 working holiday visas at the time and were employed after responding to advertisements on Mandarin-language websites.

The Fair Work Ombudsman investigated after the workers lodged requests for assistance, and found they had been paid flat rates as low as \$15.60 an hour.

Under the Fast Food Industry Award, as casual employees they should have been paid more than \$23 for ordinary hours, and penalty rates of up to \$28.49 for Saturday work and up to \$52.23 for public holiday work.

A special clothing allowance was also underpaid and unlawful deductions were made from their wages as 'bonds' for their uniforms. The workers have now been back-paid in full.

Workplace laws relating to providing employees with a Fair Work Information Statement and information about their classification and status were also contravened.

Fair Work Ombudsman Natalie James says it is unacceptable that the underpayments occurred despite Fair Work inspectors putting WY Pty Ltd, Chua and Fu on notice to pay staff correctly in 2012 after finding employees were being paid unlawfully low, flat rates.

"Despite the warning we issued in 2012, the business continued to recruit and underpay vulnerable overseas workers and had not changed the initial flat hourly rates it was paying in almost four years," Ms James said.

"The penalties send a clear message to business operators that if they ignore our warnings to fix up underpayment problems, we are prepared to take legal action and serious consequences will apply.

"We treat cases involving underpayment of overseas workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements, language barriers and a reluctance to complain."

Ms James says it is significant that the internal payroll and account manager of the business was penalised for being an accessory to the contraventions.

"While not being primarily responsible for operating the business, this manager was fully aware employees were being deliberately underpaid and helped to facilitate the exploitation of two vulnerable workers," she said.

"Managerial staff need to be aware that knowingly facilitating the underpayment of employees' minimum entitlements is serious, unlawful conduct and will not be tolerated."

In addition to the penalties, the Fair Work Ombudsman secured Court Orders requiring WY Pty Ltd to include Fast Food Industry Award details and Fair Work Ombudsman contact information in all job advertisements it places for two years, including on overseas websites – and to provide new employees with a copy of the Fair Work Information Statement (FWIS) in their language of choice.

It is the first time the Fair Work Ombudsman has secured such Court Orders and reflects the Agency's concern that the business has recruited overseas workers and exploited their vulnerability.

Ms James says she is concerned about the number of employers from culturally and linguistically diverse backgrounds who have been in breach of workplace laws, particularly when they are employing workers from within their own communities.

"I want to make it clear to all employers that minimum wage rates, record-keeping obligations and the issuing of pay slips apply to everyone in Australia and they are not negotiable," she said.

"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."

Ms James says her Agency is also committed to improving compliance in the hospitality industry.

The Fair Work Ombudsman's three-year National Hospitality Industry Campaign, finalised last year, resulted in more than \$2 million being recovered for underpaid employees.

Employers and employees 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.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website. The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

NOTE: WY Pty Ltd sold the 'Hanaichi Japanese Fine Food' outlets at Chermside in August, 2015 and the current operators of the outlets have no involvement in these proceedings.

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

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## Contact us

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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

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