

Melbourne cafe operator back in Court after 54 employees allegedly underpaid \$73,000

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The operator of a 24-hour café in Melbourne's Crown Casino precinct is facing Court for allegedly undercutting minimum wage and penalty rates despite having been put on notice, resulting in 54 employees being underpaid more than \$70,000.

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against Ital One Holdings Pty Ltd, which operates a number of cafes and restaurants in Melbourne, including Café Baci in the Crown precinct at Southbank.

Also facing court is the company's sole director, Melbourne man Len Di Pietro.

The Fair Work Ombudsman alleges 54 employees at Café Baci - which operates 24 hours a day, seven days a week - were paid flat rates as low as \$16 for all hours worked, leading to a total of \$73,347 in underpayments.

The workers were employed as waiters, kitchen hands, chefs and in other roles and 25 of the workers were visa holders.

The workers were from a variety of countries including France, Italy and India and they were mainly on student and 417 working holiday visas.

It is alleged the flat hourly rates (which varied from \$16 to \$48) led to underpayment of various entitlements, including the minimum wage rates, overtime rates, casual loadings and penalty rates for weekend, public holiday, late night and early morning work employees were entitled to under the Restaurant Industry Award 2010.

It is alleged the underpayments of all but one employee occurred during a period of just under three months in 2015. The highest alleged individual underpayment during this period is \$4807 of a 417 visa-holder who was allegedly paid a flat rate of \$17.18 but was entitled to an ordinary casual hourly rate of up to \$23.09, weekend rates of up to \$27.71 and public holiday rates of up to \$46.18.

The other employee, a food and beverage attendant, was allegedly underpaid \$5433 between June and September last year.

The alleged underpayments of all workers have now been almost fully rectified.

The Fair Work Ombudsman discovered most of the alleged underpayments when it conducted a proactive audit of Café Baci in 2015.

It is alleged the underpayments occurred despite the Fair Work Ombudsman having previously put Mr Di Pietro and Ital One Holdings on notice to comply with their obligations to pay minimum wage and penalty rates a number of times in the context of investigating 12 previous underpayment allegations from workers dating back to 2007.

The Fair Work Ombudsman also provided assistance in 2014 to three former Café Baci workers who took their own actions in the small claims division of the Federal Circuit Court, which resulted in Ital One Holdings being ordered to back-pay the three workers a total of more than \$32,000.

Fair Work Ombudsman Natalie James says a key factor in the decision to commence legal action was that alleged underpayments of vulnerable workers had occurred despite the education provided to Mr Di Pietro and Ital One Holdings.

"It is simply unacceptable for an employer to continue to underpay workers after being directly educated on their obligations to meet minimum employee pay rates and having been ordered by a Court to back-pay workers," Ms James said.

"We also 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."

Ital One Holdings faces penalties of up to \$54,000 per contravention and Mr Di Pietro faces penalties of up to \$10,800 per contravention.

The Fair Work Ombudsman is also seeking Court orders for Ital One Holdings to commission an audit of its compliance with workplace laws and for Mr Di Pietro and other relevant managerial staff to undertake workplace relations training.

An injunction restraining the company and Mr Di Pietro from contravening the Restaurant Industry Award 2010 in future is also being sought. If the injunction is granted, each could face contempt of court proceedings for any further contraventions proven in court.

In the 2015-16 financial year, 38 of the Fair Work Ombudsman's 50 litigations (76 per cent) involved a visa holder, and more than \$3 million was recovered for all visa-holders.

Employers and employees can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50 and information and helpful materials on the website is translated into 30 different languages.

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