

Subway franchisee faces Court over alleged deliberate underpayment of Chinese worker

7 July 2017

The franchisee of two Subway outlets in Sydney is facing Court for allegedly short-changing a Chinese worker more than \$16,000.

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against Danmin “Irene” Zhang, who, with her husband, owns Subway franchise outlets at Artarmon and Stanmore.

Also facing Court is the company Ms Zhang and her husband operate, G & Z United Pty Ltd.

The Fair Work Ombudsman alleges a Chinese national was underpaid a total of \$16,345 for work performed across the Artarmon and Stanmore Subway outlets between October 2014 and April 2016, except for a four-month period where she returned to China.

The worker, a casual food and beverage attendant aged in her late 20s, was in Australia on a Skilled Nominated (subclass 190) visa at the time.

Fair Work Ombudsman inspectors investigated after she lodged a request for assistance.

It is alleged that Inspectors found she had been paid flat rates of \$14 to \$14.50 for all hours worked, leading to underpayment of her minimum hourly rates for ordinary hours, casual loadings and penalty rates for evening, weekend and public holiday work.

Under the Fast Food Industry Award 2010, she was entitled to receive minimum rates of more than \$18, plus casual loading, for ordinary hours and penalty rates of up to \$52.22 on public holidays.

A special clothing allowance was allegedly also underpaid and laws relating to record-keeping, pay slips and requirements to inform employees about their terms of engagement and classification were allegedly contravened.

The worker was back-paid in full earlier this year.

It is alleged the underpayment of the worker occurred despite Ms Zhang having received summaries of applicable minimum Award wage rates from the Independent Purchasing Company Australasia, a company which works closely with the Subway franchisor to help ensure Subway franchisee outlets meet compliance and branding requirements.

It is alleged Ms Zhang and her company deliberately undercut the wage rates by a significant amount despite the summaries provided by Independent Purchasing Company Australasia being displayed on the walls of the Artarmon and Stanmore Subway outlets.

Fair Work Ombudsman Natalie James says legal action has been commenced because of the alleged blatant exploitation of a vulnerable overseas worker.

G & Z United Pty Ltd faces penalties of up to \$54,000 per contravention and Ms Zhang faces penalties of up to \$10,800 per contravention.

Ms James says exploitation of workers in franchises continues to be a concern for the Fair Work Ombudsman and she welcomed the Government’s proposed new laws relating to underpayments within franchise networks.

In April this year, Ms James made a submission to a Senate Inquiry supporting the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017. Ms James stated that the package of measures contained in the Bill will go some way to giving the Fair Work Ombudsman the tools to combat the most serious worker exploitation.

Ms James says that in an environment where the public are demanding greater transparency and accountability by well-known franchise brands, it is crucial that franchise service networks are proactive in ensuring they have systems in place to promote and ensure compliance.

Ms James says the Fair Work Ombudsman remains keen to work with businesses that want to make a commitment to compliance with workplace laws part of their brand.

“With the Government proposing new laws to capture franchisors that fail to deal with exploitation of workers by their franchisees, the Fair Work Ombudsman’s door is always open. We are always willing to work with any franchise ready to take action to show it takes

compliance with workplace laws throughout its network seriously," Ms James said.

"Earlier this year Foodco, the owner of the Muffin Break and Jamaica Blue café brands, entered into a compliance partnership with my agency to help promote compliance across more than 300 locations and to protect the 3000 workers engaged by franchisees in its networks.

"Foodco's brands did not have a significant history of non-compliance and its compliance partnership was a result of the company approaching my agency seeking assistance to prevent the exploitation of its workforce. We encourage other businesses to follow suit," Ms James said.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call 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 30 languages and is available on the website.

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>).

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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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