

Pizza Hut franchisee faces Court over alleged sham contracting, underpayment

15 June 2017

A Pizza Hut franchisee on the Gold Coast is facing Court for alleged sham contracting activity and underpaying an Indian delivery driver more than \$6000.

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against Gold Coast man Dong Zhao, who owns and operates the Pizza Hut franchise outlet at Upper Coomera.

Also facing Court is Mr Zhao's company Skyter Trade Pty Ltd.

Fair Work Ombudsman inspectors investigated Mr Zhao's Pizza Hut outlet as part of an activity that involved audits of more than 30 Pizza Hut outlets and identified widespread non-compliance in the franchise network.

It is alleged inspectors found that Mr Zhao had asked a delivery driver he engaged at his Pizza Hut outlet to provide an Australian Business Number (ABN) and then treated him as an independent contractor between November 2015 and May 2016. The Fair Work Ombudsman alleges the driver ought to have been engaged as an employee and the arrangements amount to 'sham contracting'.

The driver, an Indian national aged in his 20s, was in Australia as a dependent on his wife's international student visa at the time.

It is alleged that in an interview with a Fair Work inspector, Mr Zhao admitted that he paid the employee a flat rate of pay of no more than \$16 per hour.

However, as an employee rather than an independent contractor, the worker was entitled to receive at least \$20.36 for ordinary hours and up to \$40.72 for overtime and public holiday work under the Pizza Hut enterprise agreement that applied to the business.

He was allegedly also underpaid a per-delivery entitlement, superannuation and a uniform allowance. The driver has now been back-paid in full.

It is also alleged that Mr Zhao and his company failed to comply with a Notice to Produce employment records and contravened pay slip and record-keeping laws, including by providing false records to the Fair Work Ombudsman during its investigation.

Fair Work Ombudsman Natalie James says legal action has been commenced because sham contracting is serious conduct that deprives employees of basic minimum wages and protections.

Skyter Trade Pty Ltd faces penalties of up to \$54,000 per contravention and Mr Zhao faces penalties of up to \$10,800 per contravention.

The Fair Work Ombudsman is also seeking orders that Mr Zhao's company commission retrospective and future audits of pay practices at his Pizza Hut outlet and rectify any underpayments discovered, and to display a workplace notice containing information about minimum lawful pay rates and Fair Work Ombudsman contact details.

The matter is listed for a directions hearing in the Federal Circuit Court in Brisbane on August 7.

The Fair Work Ombudsman's activity [focused on Pizza Hut outlets \(www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/january-2017/20170127-pizza-hut-media-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/january-2017/20170127-pizza-hut-media-release) and involved audits of 34 franchised Pizza Hut stores, of which 32 engaged delivery drivers. Non-compliance was identified in at least 24 stores and seven franchisees had misclassified their delivery drivers as contractors when they were in fact employees.

As a result of the activity, three Pizza Hut franchisees have entered into Enforceable Undertakings with the Fair Work Ombudsman and 11 were issued with Compliance Notices (www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/pizza-hut-eus).

The Fair Work Ombudsman is continuing to finalise investigations into a number of other franchisees and further enforcement action is possible.

In a [recent speech \(www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches), Ms James raised concerns about the impact that fierce competition in the pizza sector, which had been dubbed the 'pizza wars', was having on the pay packets of vulnerable workers employed in the sector.

In the speech, Ms James also stated that: "We are also in discussions with Pizza Hut about what it might do to address what appears to be widespread non-compliance by its franchisees. The evidence has been in front of Pizza Hut since January this year. Unfortunately the franchise is yet to make any commitment to address what appears to be a systemic problem in its network."

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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Fair Work Online: www.fairwork.gov.au

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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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