

Gold Coast restaurant operator allegedly paid overseas workers as little as \$8 an hour

7 March 2017

The Fair Work Ombudsman has commenced legal action against the operator of a Japanese restaurant on the Gold Coast, alleging his company paid overseas workers as little as \$8 an hour and used false records to suggest he paid higher rates.

Facing the Federal Circuit Court is Shigeo Ishiyama, a Japanese migrant who owns and operates the Samurais Paradise restaurant at Surfers Paradise and formerly operated the Japanese Curry House Kawaii restaurant in the same area

Also facing Court is Mr Ishiyama's company Samurais Paradise Pty Ltd.

The Fair Work Ombudsman alleges Mr Ishiyama and his company underpaid nine employees a total of \$59,080 over a period of just four months between July and October, 2015, as a result of paying them as little as \$8 an hour.

Most of the employees, who performed various cooking and waiting duties, were Japanese citizens aged in their 20s who were in Australia on 417 working holiday visas.

Fair Work inspectors conducted a self-initiated audit of the restaurants in 2015 and allegedly discovered employees were being paid low, flat rates that undercut lawful minimums.

The audit was part of wider activity targeting Gold Coast restaurants and fast food outlets.

Inspectors educated Mr Ishiyama on his obligations under workplace laws and his company subsequently made back-payments to employees.

However, after inspectors conducted follow-up checks of the restaurants, the Fair Work Ombudsman alleges Mr Ishiyama and his company provided inspectors with false records purporting to show that employees were being paid lawful minimum rates.

The Fair Work Ombudsman alleges Mr Ishiyama's company had in fact continued to underpay employees, paying flat rates of \$8 to \$11 an hour.

Under the Restaurant Industry Award 2010 at the time, the employees were allegedly entitled to minimum hourly rates of up to \$18.47 and penalty rates ranging from \$26.03 to \$46.18 an hour for weekend and public holiday work.

Alleged individual underpayments range from \$2128 to \$11,006. The employees have been back-paid in full, except for one employee owed \$3246 who is yet to be located.

Fair Work Ombudsman Natalie James says legal action had been commenced due to the seriousness of the matter and the involvement of young overseas workers.

"It is completely unacceptable that this employer allegedly continued to blatantly undercut lawful minimum rates, despite being educated about his obligations," Ms James said.

Samurais Paradise Pty Ltd faces penalties of up to \$54,000 per contravention and Mr Ishiyama faces maximum penalties of up to \$10,800 per contravention.

A hearing in the Federal Circuit Court in Brisbane is scheduled on 9 August 2017.

Ms James says she is increasingly concerned about the number of employers from culturally and linguistically diverse backgrounds who are underpaying workers from within their own ethnic communities.

"I want to make it clear that the lawful obligations to pay minimum wage rates, keep appropriate employment records and issue pay slips apply to all employers in Australia and they are not negotiable," she said.

"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.

"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.”

Editor's note

Last month the Fair Work Ombudsman described how another Gold Coast Japanese restaurant was found to have underpaid 10 workers more than \$24,000 (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170201-haru-eu-release>) .

The Fair Work Ombudsman announced last year that it had entered into an Enforceable Undertaking with the operators of a Japanese restaurant at Surfers Paradise after they admitted paying overseas workers as little as \$10 an hour (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/january-2016/20160121-uchouten-eu-presser) .

In addition, a Judge recently imposed more than \$200,000 in penalties and issued a stinging rebuke to two migrant Asian business operators in Brisbane for their “extremely serious” conduct in exploiting five workers from a similar cultural background (www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170206-migrants-employers-penalty) .

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 seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

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Fair Work Online: www.fairwork.gov.au

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Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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