

Sydney fast food operator penalised for underpaying Korean employees \$111,000

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The operators of a chain of fast food sandwich outlets in Sydney have been penalised a total of \$87,040 for exploiting overseas workers and using false records.

Sydney man Jae Kwang Kim, who owns and operates six 'Little Vienna' outlets in the Sydney CBD, has been penalised \$10,880 and his company Little Vienna Pty Ltd has been penalised a further \$76,160.

The penalties, imposed by the Federal Circuit Court, are the result of legal action by the Fair Work Ombudsman.

Eleven South Korean employees at the Little Vienna outlets were underpaid a total of \$111,781 for various period of work between December, 2012 and April, 2015.

Fair Work Ombudsman inspectors investigated after the employees complained.

Ten of the employees were on 417 working holiday visas and one was on a student visa. Most of the employees spoke little English and one was a junior, aged 19 at the time.

The employees were paid \$10 an hour for their first two weeks of work, before being paid flat rates of \$11 to \$13 an hour. As casual employees under the Fast Food Industry Award, the adult employees were entitled to \$21.21 to \$23.15 an hour, with the junior employee entitled to slightly lower rates.

One of the adult employees was underpaid by nearly \$30,000.

The impact on the employees was significant, with two of the employees giving evidence that without financial assistance from friends or family, they would not have been able to meet basic living expenses.

All employees have now been back-paid in full.

Kim and his company also contravened workplace laws during the Fair Work Ombudsman's investigation by providing inspectors with fabricated records that purported to show staff had been paid much higher rates than was actually the case. Laws relating to pay slips and minimum engagement hours were also contravened.

Judge Robert Cameron found that the underpayment of the employees was deliberate and said Kim had not expressed remorse or regret for his actions.

The penalties imposed should "serve as a warning to others not to engage in similar conduct", Judge Cameron said.

"The failure to keep necessary records is a particularly pernicious practice because it makes the proper quantification of workers' entitlements more difficult than would otherwise be the case."

Judge Cameron also noted that the workers were at particular risk of exploitation saying "the employees were all foreign nationals with limited understanding of Australia and with limited English language skills... I infer that they were comparatively isolated and vulnerable as a consequence."

Fair Work Ombudsman Natalie James says the penalties imposed send a message that exploiting overseas workers is serious conduct that will not be tolerated.

Ms James says a particularly concerning feature of the case was that the exploitation occurred after Kim and his company deliberately recruited Korean employees by placing job advertisements on a Korean language website.

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," Ms James said.

Persistent underpayment matters involving Korean visa-holders prompted the Fair Work Ombudsman to reach out to the Korean business community (see: [FWO reaches out to Korean community to help raise awareness of workplace rights, obligations](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160919-group-k-eu-release) (<http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160919-group-k-eu-release>)).

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

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

Resources on the website include a Pay and Conditions Tool (PACT) that employers can use to determine the pay rates applicable to their employees, including base pay rates, allowances, overtime and penalty rates.

In recognition that some employees are reluctant to complain about their workplace issues, the Fair Work Ombudsman now has an "Anonymous Report" function to allow the community to report potential workplace breaches. Intelligence can be provided confidentially at www.fairwork.gov.au/tipoff.

The Fair Work Ombudsman has released the 'Record My Hours' app aimed at tackling the persistent problem of underpayment of young workers and migrant workers around the country. The app, which equips workers with a record of the time they spend at their workplace by using geofencing technology to register when they arrive at work and when they leave, is available for download from iTunes or Google Play stores.

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Contact us

Fair Work Online: www.fairwork.gov.au

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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