

## **\$284,000 in penalties after “heinous” conduct at Gold Coast restaurant**

19 October 2017

The operators of a Gold Coast restaurant have been penalised more than \$284,000 and criticised by a Judge for their “heinous” conduct after paying overseas workers as little as \$8 an hour and using false records to try to cover it up.

A \$38,000 penalty has been imposed against Shigeo Ishiyama, who owns and operates the Samurais Paradise restaurant at Surfers Paradise and formerly operated the Japanese Curry House Kawaii restaurant nearby.

Ishiyama's company, Samurais Paradise Pty Ltd, has been penalised a further \$246,400.

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

Ishiyama and his company underpaid nine employees a total of \$59,080 over a period of just four months in 2015.

Most of the employees were Japanese citizens aged in their 20s who were in Australia on 417 working holiday visas. They performed various cooking and waiting duties at the Samurais Paradise and Japanese Curry House Kawaii restaurants.

Fair Work inspectors first asked Ishiyama and his company to provide pay records for the two restaurants in 2015 as part of an auditing campaign targeting Gold Coast restaurants and fast food outlets.

Inspectors warned them not to fabricate time-and-wages records if they didn't exist.

After discovering some underpayments in the records provided, inspectors educated Ishiyama on his obligations under workplace laws and his company made back-payments to employees.

To finalise the audit, inspectors requested that the company take steps to comply with workplace laws. The company then provided records purporting to show that all employees were now being paid correctly.

Fair Work Inspectors followed up to ensure the company had complied with its obligations and with the assistance of some workers, discovered that the company had provided false records on two occasions.

Inspectors found Ishiyama and his company had been paying employees flat rates of between \$8 and \$11 an hour for all hours worked and created false records to conceal the underpayments.

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

In his judgment, Judge Salvatore Vasta described the exploitation of the workers as “certainly deliberate” and imposed near-maximum penalties for the record-keeping contraventions, describing them as “very serious”.

“The aggravating circumstances of the falsifying of records and the provision on two occasions of false records, shows that this case is in a very serious bracket,” Judge Vasta said.

“The making of false records, as I have already said, is a most heinous offence. The Respondent was warned not to make false records, but did any way and those false records gave quite an improper picture of what was happening.”

Judge Vasta noted the significant scale of the underpayments totalling almost \$60,000 across a timeframe of just four months.

“If one extrapolated that to the course of a year, it would mean that a business such as the ones being run by the First Respondent and Second Respondent, would have a saving to them of about \$180,000,” Judge Vasta said.

“When one is looking at a small business, the temptation is great that such a saving to them would give them a competitive edge of all the other businesses in their area... Whilst one applauds persons trying to stay competitive, this cannot be done at the expense of employees and in breach of the FW Act.”

Ishiyama's company has now back-paid the workers' wages in full – and Judge Vasta has also ordered the company to back-pay the employees more than \$8,000 in outstanding superannuation.

Fair Work Ombudsman Natalie James says any businesses found to be breaching record-keeping laws run the risk of receiving even higher penalties in the future.

“Using false records in attempt to get away with underpaying workers is an insidious practice. Without adequate records it can sometimes be difficult for Fair Work Inspectors to accurately calculate a worker’s entitlements,” Ms James said.

“We welcome the court’s decision to impose near maximum penalties in this case, it is a reflection of the serious nature of this behaviour.

“The Parliament has also acknowledged the seriousness of falsifying records having recently passed legislation tripling the maximum penalties for this conduct,” Ms James said.

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.

“This case is another chance to make it clear that lawful minimum rates apply to all employees in Australia and they are not negotiable,” she said.

“We are actively seeking to dispel the myth that it’s OK to pay overseas workers a ‘going rate’ that undercuts the lawful minimum wage rates that apply in Australia.

“The wealth of free advice and educational material on our website – including in 30 different languages – and availability of our small business helpline means there is no excuse for mistakes, regardless of an employer’s background.”

Employers and employees can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) (<http://www.fairwork.gov.au/>) or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace. Small business option and a free interpreter service is available on 13 14 50.

The Fair Work Ombudsman’s online tools and resources can assist employers to determine their applicable Award, as well as classification and pay rates, allowances, overtime and penalty rates.

The Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

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