

\$200,000 penalty for sushi store's unlawful internship rip-off of young foreign workers

24 January 2018

A sushi outlet operator and an accountant have been penalised almost \$200,000 for their involvement in an unlawful internship program that exploited young overseas workers.

The Federal Circuit Court handed down penalties of \$161,760 against Kjoo Pty Ltd after workers were exploited at the 'Masaki' sushi outlet at the Stockland Shellharbour Shopping Centre, south of Wollongong.

Kjoo manager and part owner Hyo Jun "John" Kwon was penalised \$32,352 after Judge Philip Dowdy described him as the "architect" of many of the contraventions. Kjoo's accountant Ok Gyu Lim, director of accountancy firm Hanlim, was also penalised \$4608 for his involvement in preparing false records that were submitted to the Fair Work Ombudsman during its investigation.

Three workers were underpaid a total of \$51,025 at the Masaki sushi outlet between September 2014 and July 2015.

The women, who were aged 20 and 21 and who spoke little English, came to Australia from Korea on 417 working holiday visas.

They had studied at a private Korean college called the Busan Institute of Science and Technology. Kwon and his company Kjoo entered into a so-called 'Internship Agreement' with the college, which encouraged the three to travel to Australia for work experience.

Under the purported internship agreement, the workers were paid flat rates of between \$12 and \$13.50 per hour in cash, each working four to six days per week, averaging more than 38 hours' per week.

However, as the agreement was not authorised under any Australian law and the work performed at Masaki was not a formal part of the workers' college studies, the workers were properly classified as employees and entitled to be paid the minimum pay rates that applied under the Fast Food Industry Award 2010.

Judge Dowdy found that Kwon knew the workers were entitled to be paid according to the Award and should have received minimum hourly rates ranging from \$16.67 to \$18.99 plus casual loadings, and penalty rates ranging from \$23 to \$47 an hour.

Unlawful deductions were also made from the workers' wages for accommodation.

The Fair Work Ombudsman discovered the underpayments when it launched an investigation after receiving requests for assistance from the workers.

After the Fair Work Ombudsman issued a Notice to Produce records, Lim, on Kwon's advice, created false pay records purporting to show the workers had been paid much higher wage rates than was actually the case.

Judge Philip Dowdy said there was a "deliberate, intentional and informed decision by Kjoo, through Mr Kwon, to underpay the employees to gain a financial advantage for its business".

"The deliberate targeting of the employees for underpayment is emphasised by the fact that all other employees of businesses associated with Mr Kwon had been paid according to Australian law," Judge Dowdy said.

"I regard the creation of this false documentation and its submission to the [Fair Work Ombudsman] as if they were true and correct as the highest level of dishonesty," Judge Dowdy said.

In relation to Lim, Judge Dowdy said that as a practicing accountant he had breached the "fundamental obligations of those who practice a profession, namely in the words of Francis Bacon, "not to descend into any course that is corrupt or unworthy".

"His conduct... merits the most serious condemnation."

The underpayments were rectified prior to the commencement of the litigation.

Fair Work Ombudsman Natalie James says the substantial penalties reinforced the message that there were serious consequences for employers who used unlawful internship programs as a source of cheap labour.

"My Agency has no tolerance for those who deliberately target the vulnerabilities of young workers, especially migrant workers, for their own financial gain," Ms James said.

“The system allows for unpaid work in some circumstances – for example, where they are part of an approved program. But the law prohibits the exploitation of workers by characterising them as ‘interns’ or as doing ‘work experience’ when those individuals are fulfilling the role of an employee. Such workers must be paid minimum employee entitlements.”

Ms James says the successful legal actions send a clear message that her Agency is prepared to use accessorial liability laws to hold any party involved in the exploitation of vulnerable workers to account.

“This decision is also another reminder for professional advisers that they will be held responsible for their part in workplace contraventions – claiming you were just following a client’s orders is no excuse,” Ms James said.

Lim’s conduct has been referred to the Tax Practitioners’ Board and the Institute of Professional Accountants by the Fair Work Ombudsman.

In 2016, the Fair Work Ombudsman secured Court penalties totalling \$281,010 against media company AIMG BQ Pty Ltd and its director in a case involving exploitation of a Chinese international student through an unpaid internship.

In the same year the Fair Work Ombudsman secured a \$17,500 penalty against the former operator of a Melbourne marketing company over her involvement in the underpayment of three former interns (see: [Penalty for underpayment of interns \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/february-2016/20160216-aldred-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/february-2016/20160216-aldred-penalty)).

In 2015, Melbourne company Crocmedia was fined \$24,000 for implementing an unpaid work arrangement that led to two young employees being underpaid thousands of dollars (see: [Company fined \\$24,000 over unpaid work scheme \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/january-2015/20150129-crocmedia-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/january-2015/20150129-crocmedia-penalty)).

Last year the Fair Work Ombudsman also commenced litigation against a fashion industry start-up for allegedly running an unlawful unpaid internship program and underpaying three workers more than \$40,000 (see: [Reality contestant faces court over alleged unpaid internship, underpayments \(www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20170601-her-fashion-box-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20170601-her-fashion-box-litigation)).

The Fair Work Ombudsman has developed a range of resources – available at www.fairwork.gov.au/unpaidwork (<http://www.fairwork.gov.au/unpaidwork>) – for employers, employees and higher education institutions to promote a clear understanding in the community about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act.

Employers and employees can seek assistance at www.fairwork.gov.au (<http://www.fairwork.gov.au/>) or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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Page reference No: 7968

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