

\$300k in penalties against burger bar operator evidence of cultural issues in hospitality industry

9 May 2018

Penalties of more than \$300,000 against a former Melbourne burger bar operator for exploiting young and overseas workers are the latest wake-up call to the hospitality industry to improve widespread non-compliance, according to Fair Work Ombudsman Natalie James.

Todd Patrick Buzza, who formerly owned and ran Burger Buzz outlets in Brunswick and West Melbourne, has been penalised \$51,735 and his company Rum Runner Trading Pty Ltd has been penalised an additional \$258,495 over the exploitation.

The penalties, imposed in the Federal Circuit Court, are the result of the Fair Work Ombudsman taking two separate legal actions against Buzza and his company for what Judge Suzanne Jones called “blatant” and “extraordinary” conduct.

The penalties are also the latest of a string of penalties secured by the Fair Work Ombudsman against hospitality industry employers.

Ms James said restaurants, cafés and takeaway food outlets accounted for 29 per cent of the Fair Work Ombudsman’s litigations in 2015-16 and 2016-17.

“It is deplorable that nearly one third of the most serious cases that end up in court involve this one sector,” Ms James said.

“The Fair Work Ombudsman’s experience and data suggests that a disturbing culture of non-compliance has emerged in the restaurant, cafe and fast food sector that is completely unacceptable,” she said.

“There is a growing intolerance in the community for underpayment of workers in this sector.”

Ms James says it is a major concern that hospitality industry workers make up 7.2 per cent of the labour market but so far in this financial year they account for more than 25 per cent of the underpaid workers the Fair Work Ombudsman has secured back-pay for.

In 2016-17 the hospitality industry also constituted 39 per cent of anonymous tip-offs from workers received by the Fair Work Ombudsman.

“Unless industry leaders take action to overhaul a culture where underpayment of wages has become normalised, this sector and its individual businesses will increasingly attract the attention of law makers and find itself in the middle of media storms,” Ms James said.

“We appreciate workplace laws can seem complex but there has never been more freely available information to help employers understand their obligations, and there is no excuse for failing to check what lawful minimum pay rates apply.

“It’s not good enough to pay employees unlawfully low rates because that’s what the business next door does or because that’s what the person you bought the business off did.”

Ms James used her speech to the National Policy-Influence-Reform Conference in Canberra last week to call on businesses to make sure they are aware of the lawful minimum pay rates that apply to their staff by using the self-help tools available on the Fair Work Ombudsman’s website at www.fairwork.gov.au.

“Even if you haven’t heard of us – if you google ‘wage rates’, you are immediately directed to our Pay Calculator,” she said. “You don’t have to try very hard to at least get on the pathway to compliance. Too often, though, we find businesses that have not even made the most basic of inquiries – or worse, have been the beneficiary of tailored advice from the Fair Work Ombudsman or some other adviser and chosen to ignore it.”

In the latest case, Buzza and his company admitted in Court that they underpaid workers in 2015 and 2016 despite Buzza’s business having been the subject of a number of previous underpayment allegations from employees, and Fair Work inspectors having educated Buzza to comply with minimum pay obligations in 2014.

Ms James says Buzza had used a business model that involved churning through and exploiting vulnerable workers for his own personal benefit.

The Fair Work Ombudsman launched its first legal action against Buzza and his company in June 2016, after they underpaid seven

workers a total of \$7113 for work performed across the Brunswick and West Melbourne Burger Buzz outlets and refused to comply with Compliance Notices requiring back-payment.

The second legal action was launched in December 2016 in response to Buzza and his company continuing to flout the law, even after being warned by short-changing a further five employees who worked at the Brunswick outlet a total of \$7513.

Most of the underpaid workers were young or overseas workers, including a number of university students and 417 working holiday visa-holders, who were generally engaged for short periods of between five days and 11 weeks and often worked night and weekend shifts.

Five of the employees were paid nothing, while most of the others were paid less than half of what they were entitled to – and that was often only after they made extensive efforts to chase Buzza for payment.

The Fair Work Ombudsman submitted in Court that it is likely there were further underpayments but they could not be quantified because Buzza and his company contravened record-keeping laws, including knowingly providing inspectors with false and misleading records.

Buzza and his company also failed to comply with a Notice to Produce records and contravened laws relating to pay slips, frequency-of-pay and meal breaks.

Despite the Court having ordered Buzza and his company to back-pay the workers in June last year, all underpayments remain outstanding.

Judge Jones said Buzza and his company had displayed “a blatant disregard for their obligations” and that it was “extraordinary” that they continued to contravene even after being warned by the Fair Work Ombudsman.

Judge Jones said Buzz and his company had “shown no genuine contrition or remorse” and noted the need to deter hospitality industry employers from similar conduct.

“When considering the question of general deterrence, a penalty should be fixed with a view to ensuring that it is not regarded by the Respondents and others ‘as an acceptable cost of doing business’, and should be likely to act as a deterrent to like-minded persons or organisations,” Judge Jones said.

“Employers should be in no doubt that they carry a responsibility to ensure that they comply with the obligations which they owe to their employees under the law.”

The exploited workers gave evidence of the significant impact the underpayments had on their lives, including contributing to difficulties in affording rent, food and paying bills and needing to borrow money from family members.

One worker said he had to sell belongings to be able to afford to buy food and pay his rent, while another said she had to move interstate to live with her parents because she could no longer afford to live in Melbourne.

Ms James says employers as blatant and callous as Buzza and his company were thankfully rare – but a recurring theme in the widespread non-compliance in the hospitality industry is employers failing to appreciate the seriousness of underpaying basic minimum entitlements and the impact that has on workers.

“It is completely unacceptable that workers should have to struggle to afford food, rent and bills because their employer fails to pay them what they are lawfully entitled to – but that is the unfortunate reality for some workers,” she said.

Ms James says businesses should be aware that under the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, which came into effect in September last year, new higher penalties of up to \$630,000 per contravention for a company and \$126,000 per contravention for an individual now apply in relation to serious breaches of work laws.

In addition, the maximum penalties for failing to keep employee records or issue pay slips have doubled to \$63,000 for a company and \$12,600 for an individual, and the maximum penalty for knowingly making or keeping false or misleading employee records has tripled to \$12,600 for an individual.

Ms James says businesses should also be aware that under the new laws, any unscrupulous employer tempted to try to frustrate a Fair Work Ombudsman time-and-wages audit by using false records can now face prosecution in criminal courts.

The new laws apply to conduct that has occurred since the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 came into effect in September 2017.

In her speech last week, Ms James warned that the Fair Work Ombudsman’s litigation program will not prompt sustained behavioural change where there is an entrenched culture of non-compliance.

“We need to disrupt non-compliant models and in this, the media is as much a weapon in our armoury as enforcement action,” she said.

“We do not step back from informing the community of deliberate and shameful exploitation of workers. Condemnation of businesses who exploit workers is strong and fast, as awareness continues to grow about non-compliance with work laws and the role the consumer can play in doing something about it.

“Community campaigns using a mix of traditional and social media driven protests have powerfully tapped into community concern about the treatment of workers. What better way to incentivise otherwise recklessly indifferent employers to check the rules and fix problems. It must be clear that simply doing ‘what others do’ is not acceptable.

“And we need industry leaders to similarly send this message.”

Ms James says her Agency conducts proactive audits of thousands of businesses each year and there would be a strong focus on fast food outlets, restaurants and cafés this year.

In addition to the penalties against Buzza and his company, the Court has imposed an injunction restraining them from contravening the Restaurant Award or pay slip obligations in future. The injunction means that Buzza and his company could face contempt of court proceedings for any further such contraventions that are proven in court.

Ms James says it is completely unacceptable that Buzza and his company have failed to comply with last year’s Court Order to back-pay workers in full, and she warns that the Fair Work Ombudsman is prepared to use all avenues to ensure Court Orders are complied with.

“The Fair Work Ombudsman has a dedicated debt recovery team who pursue every appropriate avenue available to us to ensure orders are complied with,” she said.

“This can include obtaining freezing orders and Court enforcement such as winding up companies, requiring directors attend Court to answer questions under oath about their assets and why they haven’t complied with orders, Orders to garnish wages and proceedings for contempt of Court.”

Employers and employees seeking assistance can visit www.fairwork.gov.au, where information is available in 40 languages, or call the Fair Work Infoline on 13 13 94. Small business callers can opt to receive priority service via the Small Business Helpline and an interpreter service is available on 13 14 50.

The Fair Work Ombudsman has also recently launched a Small Business Showcase - www.fairwork.gov.au/smallbizshowcase (<http://www.fairwork.gov.au/smallbizshowcase>) - which is a virtual hub providing a wealth of resources for small business owners seeking information about their workplace obligations.

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

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>) is aimed at tackling the persistent problem of underpayment of vulnerable workers by using geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

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 [confidentially report potential workplace breaches](https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language) (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language>) in English and 16 other languages.

Ms James’ speeches are [publicly available](https://www.fairwork.gov.au/about-us/news-and-media-releases/speeches). (<https://www.fairwork.gov.au/about-us/news-and-media-releases/speeches>)

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](http://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](http://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>).

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases).

Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.