

## Sushi operators penalised \$125,000

21 August 2019

The Fair Work Ombudsman has secured penalties of \$125,700 against the operators of two sushi outlets in Queensland for breaching Australia's workplace laws.

The Federal Circuit Court ordered A & K Property Services Pty Ltd, operator of two 'Sushi 79' fast food outlets at Brassall, in Ipswich, and Currimundi, on the Sunshine Coast, to pay \$108,000.

Director Yong Sin Kim has also been ordered to pay penalties of \$10,600, with fellow directors Hyun Jun Kang and Jungpyo Lee each penalised \$3,550.

Fair Work Inspectors visited the Sushi 79 outlets as part of an audit activity and found that A & K Property Services had failed to keep proper time and wages records and failed to issue any pay slips to employees.

The company underpaid nine visa holders a total of \$19,467 in wages and \$7,416 in superannuation between October and December 2017. The workers were all South Korean nationals, aged in their 20s and early 30s, in Australia on working holiday, student and vocational education visas.

Fair Work Ombudsman Sandra Parker said the case highlighted consequences of poor record-keeping.

"This is the first decision in a matter filed by the Fair Work Ombudsman under the Protecting Vulnerable Workers laws, which increased penalties for record-keeping and pay slip breaches. Accurate and timely record-keeping is a fundamental employment obligation and businesses are on notice to comply."

"Workers have a right to rely on pay slips to understand their workplace entitlements, particularly visa holders who may be vulnerable due to language or cultural barriers. We will continue to take court action to protect vulnerable workers and anyone with concerns should contact us," Ms Parker said.

Judge Michael Jarrett said the record-keeping breaches were "particularly serious".

"When an employer does not make and keep employment records, an effective safety net for employees is difficult to maintain and results in those employees being more vulnerable to exploitation," Judge Jarrett said.

His Honour said the individual underpayments, which ranged from \$214 to \$4,857, amounted to between 7.69 per cent and 43.32 per cent of the total wages the employees were owed.

"I am satisfied that the respondents' conduct, whilst not deliberate, was plainly grossly reckless."

"There is no evidence that they made any enquiries whatsoever about the correct entitlements for their employees at any point after they took over from the previous business owner," the Judge said.

The workers were underpaid minimum ordinary hourly rates, weekend penalty rates and overtime rates owed under the Fast Food Industry Award 2010. Annual leave and personal leave entitlements were also not accrued. The three directors were involved in leave breaches, with Mr Kim also involved in the record-keeping and pay slip breaches. All wages and superannuation has been back-paid.

The respondents' admissions of liability meant that the FWO did not have to rely on the reverse onus of proof laws for underpayments where inadequate records are kept or pay slips not issued.

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