

Chatime franchisor faces court

18 December 2019

The Fair Work Ombudsman has commenced legal action against the Australian franchisor of the Chatime bubble tea chain and its managing director, alleging employees at franchisor-operated Chatime outlets in Sydney and Melbourne were underpaid more than \$169,000.

Facing the Federal Circuit Court is Chatime Australia Pty Ltd, which is the franchisor of dozens of Chatime outlets around Australia and also directly owns and operates a number of Chatime outlets.

The Fair Work Ombudsman is also taking action against Chatime Australia managing director Chen 'Charley' Zhao for his alleged involvement in some of the underpayments.

Fair Work Ombudsman Sandra Parker said inspectors discovered the alleged underpayments during proactive audits.

"It is particularly disappointing to be making allegations of significant underpayments against a franchisor of this size. We expect franchisors to not only pay their own staff correctly but to take responsibility for ensuring that their franchisees comply with the law."

"Enforcing workplace laws in the fast food sector and in franchise networks more generally continue to be priorities for the Fair Work Ombudsman," Ms Parker said.

It is alleged that between August and December 2016, Chatime Australia paid employees at stores it operated flat rates as low as \$7.59 to \$24.30 per hour and adopted a practice of not paying Fast Food Industry Award entitlements such as loadings and penalty rates.

It is alleged that this occurred despite Chatime Australia's former chief financial officer having previously provided Mr Zhao with information on minimum Award rates and highlighted to him that Chatime Australia was "only partially complying" with the Award.

It is alleged that employees were underpaid the ordinary hourly rates, overtime rates, casual loadings and penalty rates for weekend, night and public holiday work they were entitled to under the Fast Food Industry Award.

Annual leave entitlements and minimum engagement pay were allegedly also underpaid.

It is alleged that Mr Zhao was involved in the underpayment of overtime rates, casual loadings and penalty rates.

It is alleged that 152 employees - including 42 junior workers aged below 21 and 95 visa holders - were underpaid a total of \$169,320, with individual underpayments ranging from \$58 to \$3,990. Many of the visa holders were international students. The alleged underpayments have been rectified in full.

The allegedly underpaid employees were located at 10 Chatime outlets in Sydney across Bondi Junction, Chatswood, Wetherill Park and the CBD; and nine Chatime outlets in Melbourne, across Dandenong, Doncaster, Glen Waverley, Cheltenham and the CBD.

Ms Parker said the alleged underpayment of young and migrant workers was a concerning aspect of the matter.

"All workers in Australia have the same rights, regardless of their visa status, and we encourage anyone with concerns about their pay to contact the Fair Work Ombudsman," she said.

Mr Zhao faces penalties of up to \$10,800 per contravention and the maximum penalty for Chatime Australia Pty Ltd is up to \$54,000 per contravention.

In addition, FWO is seeking Court orders requiring Chatime Australia to commission workplace relations training for Mr Zhao and other management staff and to commission an independent professional audit of its compliance with workplace laws, provide a copy of the audit report to the Fair Work Ombudsman and rectify any underpayments identified.

A directions hearing is listed in the Federal Circuit Court in Sydney on 29 January 2020.

Employers and employees can visit 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. A free interpreter service is available on 13 14 50.

Information for franchises in Australia, including free advice and resources, is available at www.fairwork.gov.au/franchises (<https://www.fairwork.gov.au/find-help-for/franchises>).

Information for the fast food, restaurant and café sector is available at www.fairwork.gov.au/frac (www.fairwork.gov.au/find-help-for/fast-food-restaurants-cafes/fast-food-restaurants-cafes) .

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Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

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

Page reference No: 9364

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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