

Over \$250,000 in penalties for café underpayments

4 February 2019

The Fair Work Ombudsman (FWO) has secured \$257,000 in penalties against a company and its director that underpaid 54 workers at a 24-hour café in Melbourne's Crown Casino precinct.

The Federal Circuit Court penalised Len Di Pietro \$40,000 and Ital One Holdings Pty Ltd a further \$217,000 for underpayments at Café Baci at Southbank in 2015 and 2016.

The company underpaid 54 workers a combined \$73,347 through its use of flat rates which undercut entitlements including the minimum rates for ordinary hours, overtime rates, casual loadings, and penalty rates for weekend, public holiday, late night and early morning work employees were owed under the Restaurant Industry Award 2010.

Prior to this matter, three former Café Baci workers took their own actions in the small claims division of the Federal Circuit Court, which resulted in Ital One Holdings being ordered to back-pay the three workers a total of more than \$32,000 in 2014 and 2015. FWO had provided assistance to two of the workers.

Fair Work Ombudsman Sandra Parker said that repeated breaches of the Fair Work Act is unacceptable conduct that will always be met with serious consequences.

"The Fair Work Ombudsman litigated after previously putting Mr Di Pietro and his company on notice about paying the minimum wage and penalty rates. We have no tolerance for an employer that fails to act on our advice, particularly where a court has previously ordered that same employer to back-pay workers," Ms Parker said.

Judge Heather Riley said the respondents' conduct was "particularly egregious".

"[T]he [company] had been found by this court to have broken workplace laws in substantially similar ways on three previous occasions in the recent past. The respondents have shown no remorse, but sought to minimise their behaviour with complaints of being busy," Judge Riley said.

"It is incumbent on anyone running a business, no matter how busy it is or how many staff it has, to ascertain the correct rates of pay for employees and have systems in place to ensure that the correct rates of pay are paid."

"In my view, the need for general deterrence is a significant factor in this matter, given the level of disputes in the café and restaurant sector, and the vulnerability of many of the employees in that industry".

The affected employees included 25 visa holders from various countries including France, Italy and India who were mainly on student and 417 working holiday visas. One visa holder was aged just 19 at the time of the underpayments.

The café operated 24 hours a day, seven days per week, with the underpaid workers engaged as waiters, kitchen hands, chefs and in other roles. The largest individual underpayment was \$5433 for a food and beverage attendant between June and September 2016.

Ms Parker said, "All workers in Australia have the same rights at work, regardless of citizenship, and we will continue to take businesses who underpay migrant workers to court. We have an agreement with the Department of Home Affairs where visa holders can contact us for help without fear of their visa being cancelled."

Judge Riley also ordered the company to engage an external professional to audit the business's compliance with workplace laws. With the parties' consent, her Honour also ordered Mr Di Pietro and other relevant managerial staff to undertake workplace relations training.

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.

Follow the Fair Work Ombudsman [@fairwork_gov_au](https://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:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507
matthew.raggatt@fwo.gov.au (mailto:matthew.raggatt@fwo.gov.au)

Page reference No: 8830

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.