

Sushi operator faces Court under new onus of proof laws

25 January 2019

The Fair Work Ombudsman (FWO) has commenced the first legal action utilising new reverse onus of proof laws that require employers to disprove underpayment allegations in Court when they have failed to keep adequate time and wages records or issue pay slips.

The FWO has instituted proceedings in the Federal Circuit Court against A & K Property Services Pty Ltd, which operates two 'Sushi 79' fast food outlets at Ipswich and the Sunshine Coast, and company directors, Yong Sim Kim, Hyn Jun Kang and Jungpyo Lee.

Fair Work Inspectors audited the Sushi 79 outlets based at Brassall, in Ipswich and Currimundi, on the Sunshine Coast, in 2018 as part of a proactive auditing activity.

The FWO alleges that, between October and December 2017, A & K Property Services breached workplace laws by failing to keep proper time and wages records, and failed to issue pay slips to employees.

The FWO alleges that nine workers across the two outlets were underpaid a total of \$19,467 in entitlements under the Fast Food Industry Award 2010.

The workers were allegedly underpaid minimum ordinary hourly rates, weekend penalty rates and overtime rates. Allegedly, the employees were also not provided with superannuation, and their annual leave and personal leave entitlements were not accrued.

The workers were all South Korean nationals, aged in their 20s and early 30s, who were in Australia on working holiday, student and vocational education visas.

Acting Fair Work Ombudsman Kristen Hannah highlighted the significance of applying the new legal provision, which is available for conduct occurring after September 2017.

"In the past some employers had avoided facing litigation by FWO because they had breached their record-keeping obligations, and we could not present sufficient evidence in Court to prove underpayments," Ms Hannah said.

"Employers should be on notice that this loophole is now closed and the Fair Work Ombudsman will make full use of the new laws to protect vulnerable workers. Businesses who don't meet record-keeping or pay slip obligations and can't give a reasonable excuse need to disprove allegations of underpayments in Court," Ms Hannah said.

A & K Property Services faces penalties of up to \$63,000 per contravention.

Mr Kim, Mr Kang and Mr Lee are facing penalties of up to \$12,600 for their alleged involvement in the leave contraventions and, in addition to those contraventions, Mr Kim is facing penalties of up to \$12,600 for his involvement in the record-keeping and pay slip breaches.

The majority of the alleged underpayments have been rectified, but the FWO is seeking an order for back-payment of allegedly unpaid superannuation entitlements.

The Fair Work Ombudsman is also seeking court orders requiring the directors to sign up to the [My account portal \(www.fairwork.gov.au/my-account/fwosignin.aspx\)](http://www.fairwork.gov.au/my-account/fwosignin.aspx) and complete online learning courses.

The matter is listed for a directions hearing in the Federal Circuit Court in Brisbane on 25 March 2019.

Learn more about the [Protecting Vulnerable Worker's Act \(www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform\)](http://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform) .

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